



# ***Error***

---

An error occurred while processing this page. See the system log for more details.







CR12

**BULK WASTEWATER TREATMENT  
AND EFFLUENT DISPOSAL AGREEMENT**

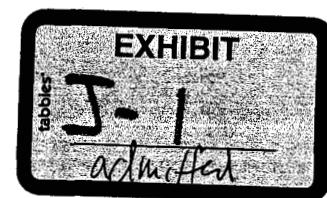
**BETWEEN**

**ARIZONA UTILITY SUPPLY & SERVICES, LLC**

**AND**

**JOHNSON UTILITIES, L.L.C.  
dba JOHNSON UTILITIES COMPANY**

**June 11, 2004**





This BULK WASTEWATER TREATMENT AND EFFLUENT DISPOSAL AGREEMENT ("Agreement") dated this 11th day of June, 2004, is between Arizona Utility Supply & Services, L.L.C. ("AUSS"), an Arizona limited liability company, and Johnson Utilities, L.L.C. dba Johnson Utilities Company, an Arizona limited liability company ("JUC"), and pertains to bulk wastewater treatment and effluent disposal services provided by JUC.

### RECITALS

A. AUSS holds a Certificate of Convenience and Necessity ("CC&N") issued by the Arizona Corporation Commission ("Commission") and authorizing the provision of wastewater utility services in certain portions of Pinal County, Arizona as shown in Exhibit A. AUSS is unable to treat all of the wastewater flows generated within portions of its CC&N and to dispose of all effluent generated from wastewater treatment services provided within its CC&N.

B. JUC also holds a CC&N issued by the Commission and authorizing the provision of wastewater utility services in certain portions of Pinal County, Arizona. JUC owns wastewater treatment plants, including a plant known as the Pecan Water Reclamation Plant ("Pecan WRP"), which plant is located in the vicinity of AUSS's CC&N as shown on Exhibit A. The Pecan WRP has been approved by the Central Arizona Association of Governments ("CAAG") under the CAAG Clean Water Act § 208 Plan and has an Aquifer Protection Permit ("APP") approved by Arizona Dept. of Environmental Quality ("ADEQ"). JUC is willing to provide limited bulk wastewater treatment service to AUSS and will, upon execution of this Agreement, take steps to promptly initiate such service to AUSS in Section 22 of AUSS's CC&N as shown on Exhibit A. JUC is also willing to temporarily receive and dispose of effluent generated from the treatment of wastewater within AUSS's CC&N. Both services, the bulk treatment of wastewater and the disposal of effluent, will be provided by JUC to AUSS on an interim basis under the terms and conditions of this Agreement.

C. AUSS has already filed an application with the Commission seeking deletion of Section 22 as shown on Exhibit A from its CC&N and transfer of said property into JUC's CC&N. Now, however, AUSS desires to transfer all of its CC&N to JUC and JUC is willing to accept a transfer of the entirety of AUSS's CC&N, if such transfer is approved by the Commission, and to accept the conveyance of any and all facilities currently being used by AUSS and necessary for JUC to provide safe and reliable wastewater utility service in the area currently covered by AUSS' CC&N. Accordingly, AUSS will, upon execution of this Agreement, promptly take steps to request transfer of its entire CC&N to JUC and, upon approval to transfer all or part of the CC&N, will take steps to convey all necessary utility facilities to JUC in accordance with the terms and conditions set forth in this Agreement.

NOW, THEREFORE, the parties have entered into this Agreement for and consideration of the mutual covenants, warranties, and representations and agree as follows:



## AGREEMENTS

1. Incorporation of Recitals. By this reference, the parties hereby agree to incorporate the recitals above as part of the terms and conditions of this Agreement as if fully set forth herein.

2. Bulk Treatment of Wastewater. AUSS acknowledges and agrees that it lacks adequate wastewater treatment capacity to treat wastewater flows from all customers in its CC&N. JUC represents and warrants that it has excess wastewater treatment capacity in the portion of its CC&N that is adjacent to and in the vicinity of AUSS's CC&N and JUC agrees, on an interim basis, to accept wastewater flows from and to treat the wastewater generated within Section 22 of AUSS's CC&N as shown on Exhibit A attached hereto and incorporated herein by this reference. AUSS will take all necessary steps to ensure that wastewater flows delivered to JUC under this Agreement originate in Section 22 and that no wastewater from other portions of AUSS's CC&N are delivered to JUC for treatment until such time as the Commission approves the transfer of AUSS's CC&N to JUC. JUC will treat such flows at its Pecan WRP, or at any other wastewater treatment facility it may designate, provided however, that AUSS will not be responsible for construction of additional facilities necessary to deliver flows from AUSS's CC&N to a treatment facility other than the Pecan WRP.

3. Bulk Treatment and/or Disposal of Effluent. "Effluent" refers generally to the water reclaimed from the treatment of wastewater. AUSS acknowledges and agrees that it lacks capacity to treat and/or dispose of effluent generated by its treatment of wastewater from all customers in its certificated service area. JUC represents and warrants that it has excess capacity to treat and/or dispose of such effluent and JUC agrees to accept effluent generated from wastewater treatment by AUSS in its CC&N and to treat and/or dispose of such effluent in a manner of its choosing so long as such treatment and/or disposal is in compliance with all applicable law and regulation. AUSS further agrees that, after the first 30 days after execution of this Agreement, all effluent thereafter delivered to JUC under this Agreement shall be of a quality equal to the discharge requirements for effluent set forth in the Aquifer Protection Permit for AUSS's Links Water Reclamation Plant. Upon request of JUC, AUSS shall furnish evidence of testing to show that such effluent meets the discharge quality standard agreed to herein. After the first 30 days after execution of this Agreement, JUC may, in JUC's sole discretion, but JUC shall have no obligation to, accept effluent of a lower quality than required by this Agreement.

4. Fees for Wastewater Treatment and Effluent Disposal Services; Security Deposit; Billing and Collection.

a. Fee for Wastewater Treatment Services. Wastewater flows to JUC's wastewater transmission and treatment system will be metered by flow meters installed by and paid for by AUSS at a point to be designated by JUC. Both AUSS and JUC shall read the flow meters on a monthly basis to determine the amount of wastewater

*Handwritten initials and signature*




transmitted to JUC by AUSS for treatment and disposal. JUC will charge AUSS a bulk treatment and disposal services fee equal to \$30.00 for each residential dwelling generating wastewater for treatment by JUC under this Agreement.

b. Fee for Effluent Disposal Services. Effluent deliveries to JUC's wastewater transmission and treatment system will be metered by flow meters installed by and paid for by AUSS at a point to be designated by JUC. Both AUSS and JUC shall read the flow meters on a monthly basis to determine the amount of effluent delivered to JUC by AUSS for additional treatment and disposal. JUC will charge AUSS a bulk effluent disposal fee equal to \$3.53 per 1000 gallons of effluent treated and/or disposed of by JUC under this Agreement.

c. Security Deposit. JUC acknowledges receipt of Twenty-Five Thousand Dollars (\$25,000) from AUSS, which amount is intended to represent twice the estimated monthly cost of wastewater treatment and effluent disposal services provided by JUC under this Agreement. This amount shall be held by JUC as a security deposit during the period this Agreement remains in effect and then returned to AUSS upon its termination unless applied at such time to outstanding amounts owed to JUC by AUSS under this Agreement. The parties further agree that the amount of the security deposit will be reviewed after 90 days and adjusted upward if it is determined that the average monthly cost of bulk wastewater treatment and effluent disposal services during the first 90 days the Agreement exceeds \$12,500, at which time AUSS shall promptly increase the security deposit to an amount that equals twice the average monthly cost of the services being provided by JUC hereunder during the first 90 days the Agreement is in effect.

d. Assignment of Accounts Receivable. In order to secure payment of the bulk treatment and effluent disposal services fees to JUC, AUSS herein assigns to JUC AUSS's accounts receivable, including, without limitation, monthly billings from customers in AUSS's CC&N, and agrees to take all additional steps required by JUC to perfect such assignment.

e. Optional Remedy for Non-Payment by AUSS. In the event of default by AUSS of any of the payment obligations of this Agreement, JUC shall have the right to provide billing and collection services for AUSS and for all AUSS customers. AUSS shall pay JUC \$2.00 per customer billed by JUC. Such billing and collection service shall be undertaken by JUC as agent for AUSS and in the same or materially similar manner as JUC currently bills its own customers, except that bills sent to AUSS's customers shall be in accordance with AUSS's Commission-approved tariff and in a format that as closely as possible matches the billing format currently used by AUSS. JUC shall provide AUSS with a monthly remittance equal to the total amount collected from all AUSS customers by JUC less the total combined monthly cost of services provided by JUC to AUSS hereunder plus billing and collection services provided by JUC to AUSS under this Agreement. JUC shall provide AUSS a detailed invoice of such charges each month at the time JUC remits collections from AUSS customers to AUSS. JUC shall remit to AUSS the collections of monies collected for AUSS less said cost at the time of the next billing cycle on a monthly basis. JUC shall also provide AUSS a



monthly customer account status report. AUSS shall be solely responsible for collection of any delinquent amounts from its customers.

f. Monthly Reporting. On or before the fifth of each month this Agreement remains in effect, AUSS shall provide a reconciliation report to the Commission's Utilities Division Staff. This reconciliation report shall state: (1) the number of gallons of wastewater delivered by AUSS to JUC for bulk treatment under this Agreement in the preceding month; (2) the number of gallons of effluent delivered by AUSS to JUC for treatment and/or disposal under this Agreement in the preceding month; (3) whether the effluent delivered to JUC under this Agreement in the preceding month was of a quality equal to the discharge requirements for effluent set forth in the Aquifer Protection Permit for AUSS's Links Water Reclamation Plant; 4) the amount paid to JUC by AUSS in the preceding month for services provided under this Agreement; and (5) whether AUSS is current on all of its payment obligations under this Agreement.

5. Termination of Bulk Wastewater Treatment and Effluent Disposal Services.

a. Termination of Bulk Wastewater Treatment Services. The provision of bulk wastewater treatment services under this Agreement shall terminate the earlier of 1) 180 days following execution of the Agreement, at which time JUC's obligation to accept and treat wastewater flows from Section 22 of AUSS's CC&N under this Agreement shall terminate without further action by the parties; or 2) an order of the Commission extending JUC's CC&N to include any portions of AUSS's CC&N, at which time JUC shall charge customers receiving wastewater treatment services from JUC in accordance with its own Commission-approved tariffs of rates and charges.

b. Termination of Effluent Disposal Services. JUC shall provide effluent disposal services to AUSS for a period of 30 days after execution of this Agreement. Thereafter, JUC shall have the right to terminate provision of effluent disposal services at anytime after this Agreement is executed upon 10 days written notice to AUSS if such effluent disposal services materially interfere with the proper operation of the Pecan WRP.

6. Regulatory Compliance and Approvals.

a. Pecan WRP. JUC shall be responsible for all permits and approvals associated with the construction and operation of the Pecan WRP and represents and warrants that it will make reasonable efforts to maintain such compliance with all applicable laws and regulations during the time this Agreement is in effect. AUSS agrees to cooperate as requested by JUC to provide information related to the generation of wastewater flows within its CC&N and AUSS's facilities and operations.

b. CAAG 208 Approval. The Pecan WRP is authorized under the current CAAG 208 Plan, as amended.

*[Handwritten signature]*  
*[Handwritten initials]*



c. Commission Approval. The parties believe that specific Commission approval of this Agreement is not required. In the event Commission approval is required or sought by either party, the parties agree to cooperate fully in any proceedings before the Commission or any other agency or tribunal.

7. Transfer of CC&N; Transfer of Facilities.

a. Transfer of AUSS's CC&N. AUSS acknowledges that JUC's willingness to enter into this Agreement is expressly contingent on and in consideration for AUSS's intention to seek Commission approval to transfer all of its CC&N to JUC. AUSS has filed an application seeking deletion of Section 22 from its CC&N and transfer of that section into JUC's CC&N. AUSS agrees to promptly take steps to seek approval of the Commission to delete and transfer the entirety of AUSS's CC&N to JUC and, following such modification, to diligently prosecute said application. JUC agrees to provide cooperation in such proceeding as necessary to effectuate the transfer of AUSS's CC&N to JUC.

b. Conveyance of Facilities. Upon approval of the ACC to transfer all or part of AUSS's CC&N to JUC, AUSS will execute a bill of sale and/or other necessary documentation to convey title to all facilities necessary for JUC to provide permanent wastewater utility services within the portions of AUSS's CC&N transferred to JUC by the ACC. Such conveyance shall be at no cost to JUC, provider, however, that at the time of conveyance, JUC will accept an assignment of any obligation of AUSS to pay refunds to developers associated with such facilities. At the time of the conveyance, AUSS shall also provide documentation evidencing that all facilities being conveyed are (1) free and clear of all liens and encumbrances; (2) subject to all necessary governmental approvals and (3) located in public utility easements or other rights-of-way. AUSS shall take steps to ensure that all rights held by AUSS in such easements and/or rights-of-way are transferred to JUC along with any regulatory approvals and permits. AUSS acknowledges and agrees that JUC shall have no obligation to accept a transfer of all or portions of its CC&N, and to initiate permanent wastewater utility services in such areas, until the steps required in this paragraph are completed to JUC's reasonable satisfaction.

8. Indemnity and Hold Harmless Agreement. AUSS shall indemnify and hold JUC harmless from, and defend JUC against (by legal counsel chosen by JUC) all claims, actions, causes of action, assertions, liabilities, losses, damages, costs and expenses, including reasonable attorneys' fees, of any kind or nature brought by a third party, including any property owner of other customer in AUSS's CC&N or regulatory agency asserting jurisdiction, arising out of or related to AUSS's failure to perform its obligations under this Agreement.

9. Notice. All notices and other written communications required hereunder shall be sent to the parties as follows:

40 8/1  
/m

Johnson Utilities Company  
Attn: George Johnson  
5230 East Shea Blvd.  
Scottsdale, AZ 85254

Arizona Utility Supply & Services, LLC  
Attn: Maurice Lee  
P.O. Box 30543  
Phoenix, AZ 85046-0543

Each party shall advise the other party in writing of any change in the manner in which notice is to be provided hereunder.

10. Default. Any claim that AUSS or JUC is in default or breach of this Agreement shall be in writing and sent via certified-return receipt United States mail to the address provided in paragraph 7 above. No default shall become effective until ten (10) days from the date of mailing, during which time the party claimed to be in default shall have an opportunity to cure the alleged default.

11. Good Standing; Authority to Execute. AUSS, and its representatives signing hereinbelow, represent and warrant to JUC, that AUSS is duly formed and validly existing under the laws of Arizona and that the individuals executing this Agreement on behalf of AUSS are authorized and empowered to bind AUSS.

12. Attorneys' Fees. The prevailing party in any litigation or other proceeding concerning or related to this Agreement, or the enforcement of thereof, shall be entitled to recover its costs and reasonable attorneys' fees.

13. Time of the Essence. Time is of the essence of every provision hereof.

14. Miscellaneous. This Agreement shall be governed by the laws of the State of Arizona. This Agreement, and each and every term and condition contained herein, shall be binding upon and inure to the benefit of the successors and assigns of AUSS and JUC. This Agreement sets forth the entire agreement between the parties and supersedes all prior negotiations, understandings and agreements between them with respect to the provision of bulk-wastewater treatment services and/or effluent disposal services, except as otherwise expressly provided herein. The Line Extension Agreement dated November 15, 2002 by and between JUC, AUSS and the developers of the Castlegate subdivision located in Section 22 of AUSS's CC&N is not amended or superseded in any manner by this Agreement, nor do JUC or AUSS waive or release any claims they may have regarding that agreement. No change in, addition to, or waiver of any provisions of this Agreement shall be binding upon either party unless in writing and signed by both parties. The remedies provided in this agreement shall not be deemed exclusive remedies but shall be in addition to all other remedies available at law or in equity. No waiver by either party of any breach of this agreement nor any failure by either party to insist on strict performance by the other party of any provision of this agreement shall in any way be

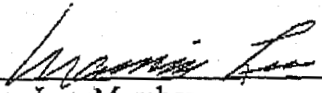
HA 204  
m



construed to be a waiver of any future or subsequent breach by such defaulting party or bar the non-defaulting party's right to insist on strict performance by the defaulting party of the provisions of this agreement in the future.

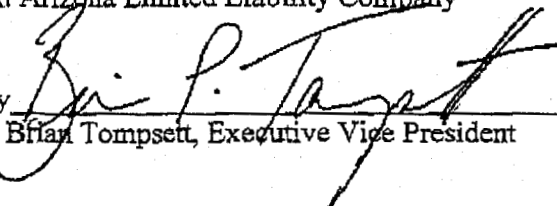
IN WITNESS WHEREOF, the parties hereto executed this Agreement as of the date first above written.

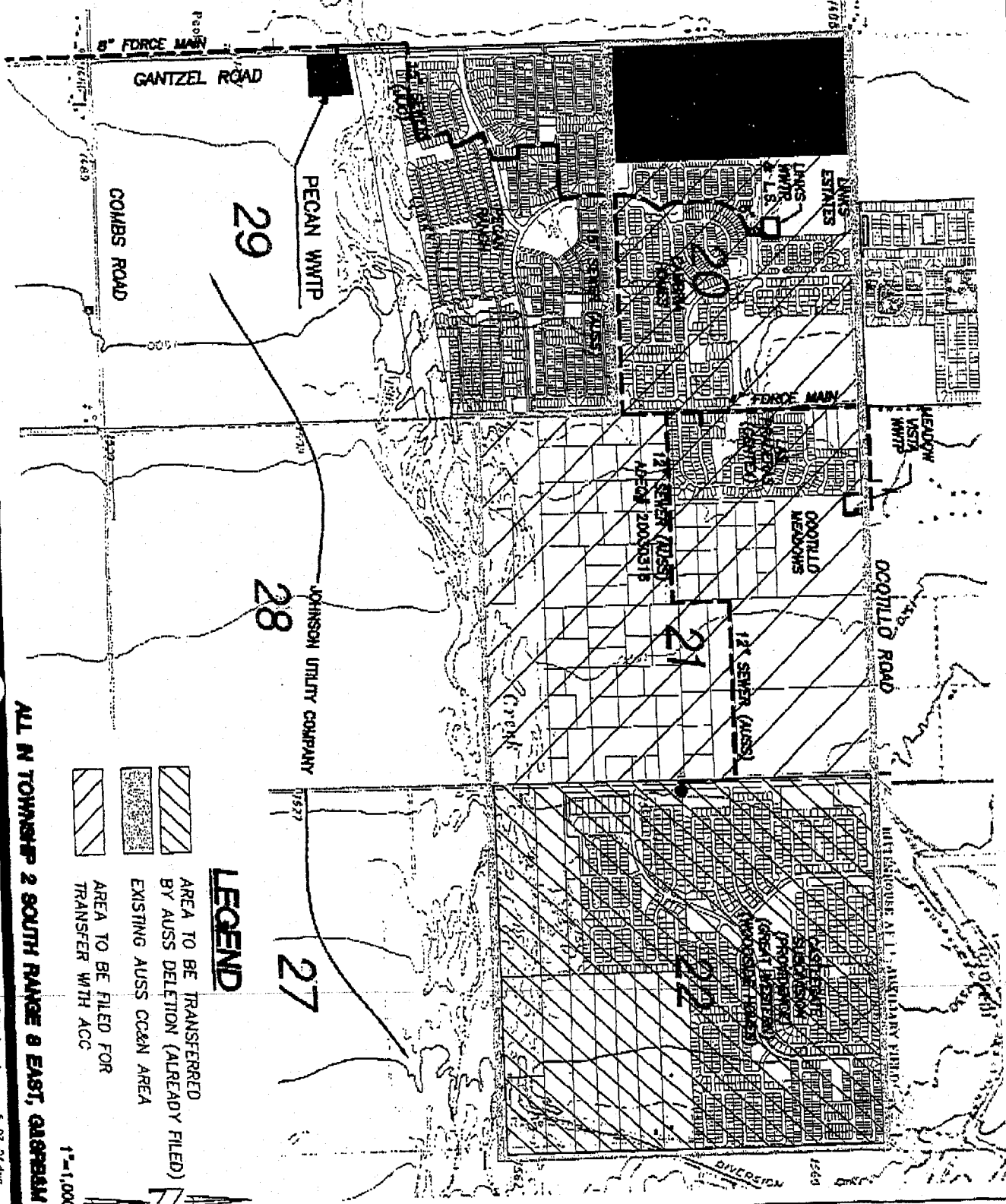
ARIZONA UTILITY SUPPLY & SERVICES, L.L.C.,  
An Arizona Limited Liability Company

By   
Maurice Lee, Member

By   
SAK Family Limited Partnership, Member

JOHNSON UTILITIES, L.L. C.,  
An Arizona Limited Liability Company

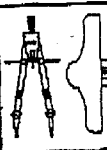
By   
Brian Tompsett, Executive Vice President



ALL N TOWNSHIP 2 SOUTH RANGE 8 EAST, GARFIELD

1"=1,000'

DRAWN  
DATE MAY, 2004  
SCALE NTS



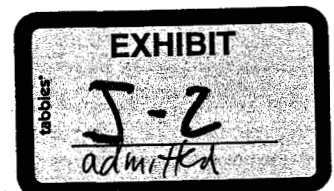
**SPECIFIC ENGINEERING, LLC.**

603 E. 5TH AVENUE SUITE 200  
SCOTTSDALE, ARIZONA 85254  
PHONE: (480) 586-4537  
FAX: (480) 586-9437



## JOHNSON UTILITIES' PROPOSED CONDITIONS FOR CC&N EXTENSION

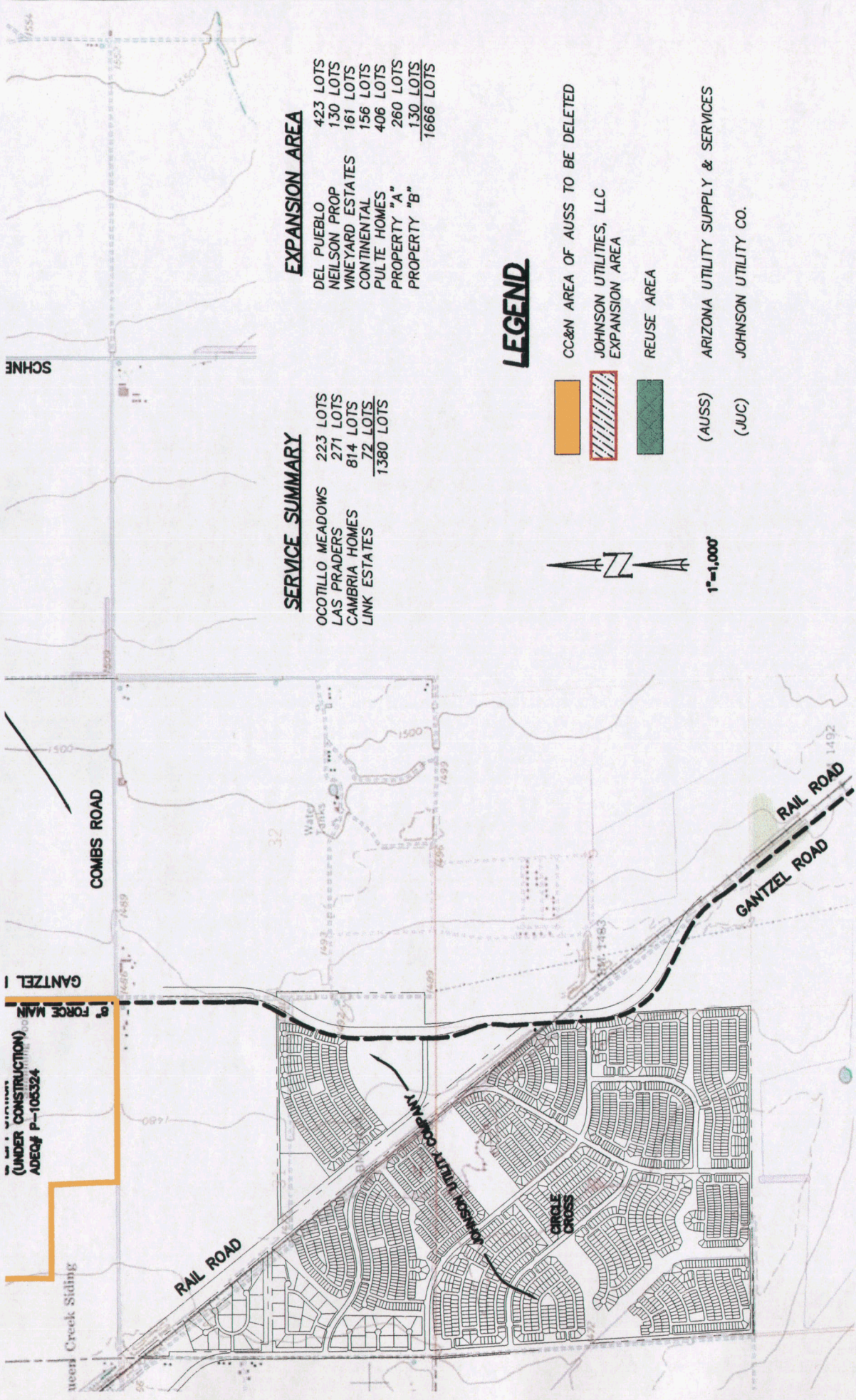
1. The Commission recognizes that JUC cannot extend permanent utility service in the area currently subject to AUSS's CC&N until such time as certain utility facilities owned and operated by AUSS (the "Assets") are transferred to JUC. Accordingly, the extension of JUC's CC&N to include areas formerly served by AUSS is conditioned on the transfer of the Assets, by bill of sale or other appropriate conveyance documents executed by AUSS and accepted in writing by JUC. The Assets subject to this condition include:
  - (a) The 12" pipeline presently serving the Castlegate Subdivision located in Section 21;
  - (b) The 15" pipeline located in Section 20;
  - (c) The 6" pipeline also located in Section 20 presently serving the Links Wastewater Treatment Plant; and
  - (d) Any and all infrastructure and pipelines related to the service of subdivisions within AUSS's presently authorized certificate of convenience and necessity.
2. The Commission further recognizes that JUC cannot accept a conveyance of the Assets identified above from AUSS until JUC is reasonably satisfied that:
  - (a) All of the Assets are free and clear of any liens, encumbrances, security or other interests;
  - (b) The Assets are located within either public rights-of-way to which JUC has authorized access and/or within granted easements, the rights to both of which have been transferred from AUSS to JUC along with any franchise rights AUSS has under a franchise or similar agreement with Pinal County, to the extent such franchise or other rights are needed by JUC to serve;
  - (c) All Assets were constructed and are being operated at the time of the conveyance in accordance with all necessary governmental approvals, including, without limitation, approvals required by ADEQ and Pinal County, and that, to the extent required, all such approvals have been transferred from AUSS to JUC; and
  - (d) All requisite consents by persons and/or entities holding security interests in or other claims to AUSS to the deletion of AUSS's CC&N and the transfer of the Assets has been obtained.
3. The extension of service by JUC in areas formerly served by AUSS shall be further conditioned on the receipt of the following by JUC:
  - (a) ADEQ approval of: (i) a modification to JUC's existing Aquifer Protection Permit ("APP") for JUC's Pecan Wastewater Treatment Plant; (ii) an APP for JUC's



Santan Wastewater Treatment Plan authorizing treatment of Two Million Gallons Per Day (consistent with JUC's prior APP application and its prior obtained 208 Plan Amendment); and (iii) an APP for JUC's Section 11 Wastewater Treatment Plant authorizing treatment of Three Million Gallons Per Day;

- (b) ADEQ approval of the transfer of the existing re-use permit to discharge effluent on the Links Golf Course to JUC without additional conditions or modifications;
  - (c) ADEQ's: (i) review of AUSS's submitted Engineering Certificate of Completion ("ECC") for AUSS's existing 6" pipeline located in Section 20 of Township 2 South, Range 8 East; (ii) issuance of the necessary verification to allow the 6" pipeline to be converted from an effluent delivery line to a wastewater force main; and (iii) approval of the modifications to the lift stations located at the Links Wastewater treatment Plant to allow the by pass of such treatment plant; and
  - (d) ADEQ's written agreement not to hold JUC responsible for any violations of any law or regulation and/or odor and operational problems related to the Assets, or any other facilities owned or operated by AUSS, to the extent such violation arises out of AUSS's ownership and/or operation of the Assets or such other AUSS facilities prior to transfer of the Assets. Such condition does not relieve JUC of its obligation to operate and maintain the Assets in accordance with applicable law and regulation after JUC accepts conveyance of the Assets from AUSS.
4. JUC will provide wastewater utility services in the extension area under its existing rates and charges on file with the Commission unless otherwise agreed between JUC and a particular developer.





**SERVICE SUMMARY**

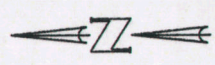
OCOTILLO MEADOWS 223 LOTS  
 LAS PRADERS 271 LOTS  
 CAMBRIA HOMES 814 LOTS  
 LINK ESTATES 72 LOTS  
 1380 LOTS

**EXPANSION AREA**

DEL PUEBLO 423 LOTS  
 NEILSON PROP 130 LOTS  
 VINEYARD ESTATES 161 LOTS  
 CONTINENTAL 156 LOTS  
 PULTE HOMES 406 LOTS  
 PROPERTY "A" 260 LOTS  
 PROPERTY "B" 130 LOTS  
 1666 LOTS

**LEGEND**

- CC&N AREA OF AUSS TO BE DELETED
- JOHNSON UTILITIES, LLC EXPANSION AREA
- REUSE AREA
- (AUSS) ARIZONA UTILITY SUPPLY & SERVICES
- (JUC) JOHNSON UTILITY CO.



1"=1,000'

MARCH, 2004

CLIENT/PROJECT		REVISIONS	
JOHNSON UTILITIES COMPANY		NO.	DESCRIPTION
		DATE	APP.
EXHIBIT A			
DESIGNED			
DRAWN			
CHECKED			
DATE			
SCALE			
PROJECT			
FILE NAME			

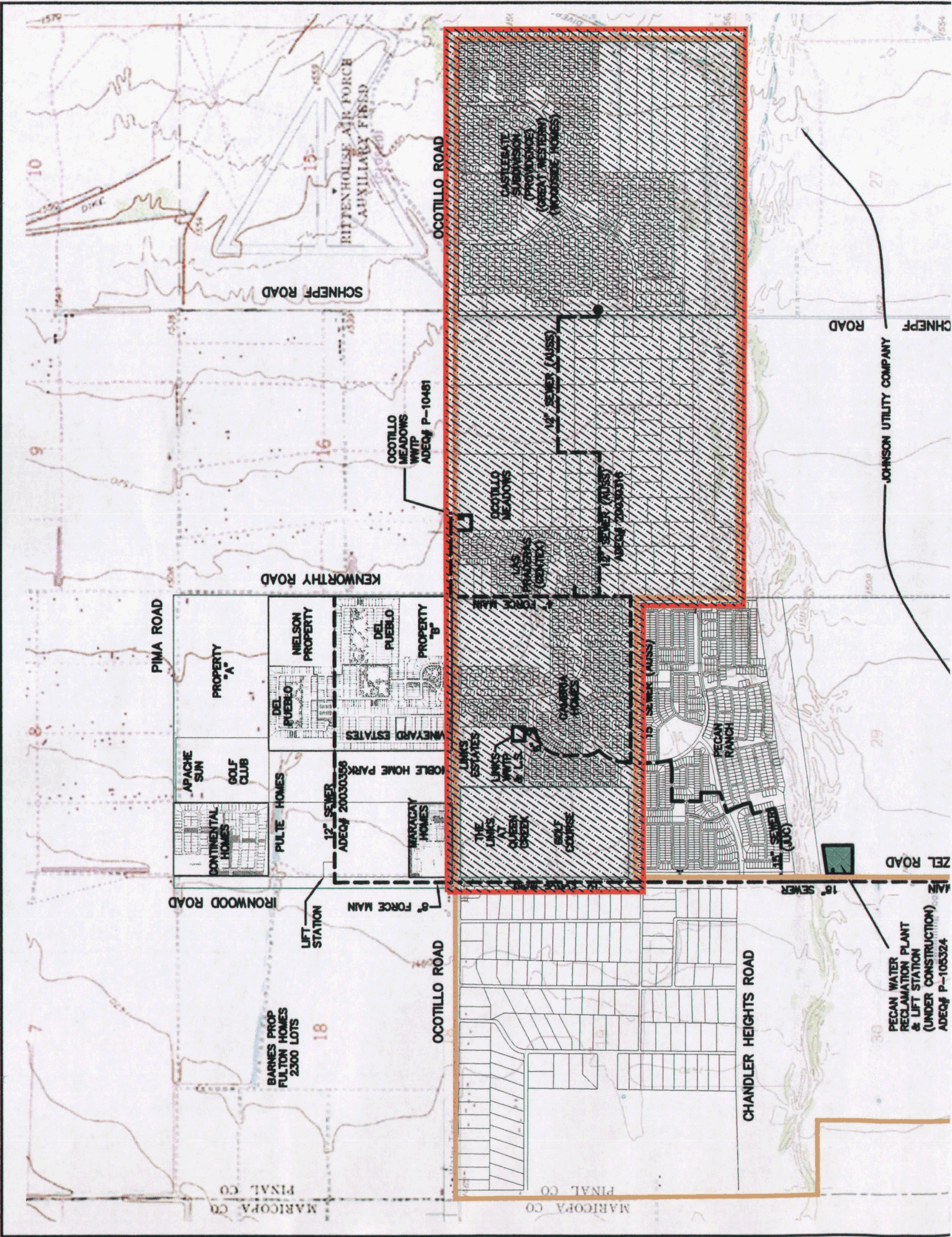
**EXHIBIT**

J-3

*admitted*

tabbles



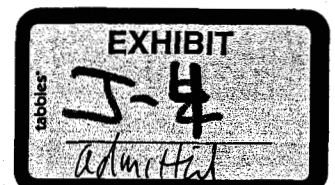




Since JUC and certain developers require certain ADEQ approvals in order for JUC to extend permanent wastewater utility service in the service territory currently certificated to AUSS, Staff recommends that JUC be issued an Order Preliminary to the Issuance of a Certificate, as authorized under A.R.S. § 40-282(D). Per that statute, the Commission can proscribe the rules to which JUC can get its CC&N extended into the service area currently served by AUSS. Hence, Staff recommends that JUC receive an order preliminary to an issuance of a certificate now, that it shall extend its CC&N only in accordance with the following rules detailed below.

A. JUC shall be required to satisfy the following conditions before its CC&N will be extended into areas presently served by AUSS:

1. JUC has acquired the assets identified in Exhibit A attached hereto ("Utility Assets") free and clear of any liens or other encumbrances.
2. The Utility Assets are located within either public rights-of-way to which JUC shall have authorized access and/or within granted easements, the rights to both of which will be transferred to JUC along with any franchise rights AUSS has under a franchise or similar agreement with Pinal County; to the extent such franchise or other rights are needed by JUC to serve.
3. The Utility Assets being acquired in order for it to commence service in the area currently certificated to AUSS can be operated by JUC in accordance with all necessary governmental approvals, including, without limitation, approvals required by ADEQ and Pinal County, and that, to the extent required, all such approvals have been transferred from AUSS to JUC.
4. JUC shall also satisfy each of the following requirements by filing each of the following five items listed below with the Commission in Docket Nos. WS-02987A-02-0837 and/or WS-02987A-04-0465:
  - a. ADEQ's written confirmation affirming that JUC's Pecan wastewater reclamation plant (ADEQ Permit No. P-105324) located at 38539 Gantzel Road, Queen Creek, Pinal County, Arizona ("Pecan Plant") has adequate wastewater treatment capacity for JUC to provide wastewater treatment services to each of the subdivisions listed in Exhibit B attached hereto.
  - b. ADEQ's written confirmation affirming that the Pecan Plant, as constructed and planned, conforms to all applicable requirements for setbacks.
  - c. ADEQ's written approval of the transfer of the existing reuse permit to discharge effluent on the Links Golf Course to JUC without additional conditions or modifications.



- d. ADEQ's issuance of an Engineering Certificate of Completion ("ECC") for the existing 6-inch pipeline located in Section 20 of Township 2 South, Range 8 East and approval to allow conversion of this 6-inch pipeline from an effluent delivery line to a wastewater force main and approval of the modifications to the lift stations located at the Links WWTP to allow the bypass of the treatment plant.
- e. All ADEQ requisite approvals for construction and operation of a lift station at the site of the former Links WWTP to allow the bypass of the Links WWTP.
- f. ADEQ's written indication that it shall not hold JUC responsible for any violations of any law or regulation and/or odor and operational problems related to the Utility Assets, or any other facilities owned or operated by AUSS, to the extent such violation arises out of any ownership and/or operation before the transfer of such assets to JUC. This condition is not intended to relieve JUC of its obligation to operate and maintain the Utility Assets in accordance with applicable law and regulation after conveyance, including the obligation to provide safe, reliable and reasonable service in accordance with A.R.S. § 40-321. Nor does this waive the regulatory authority of the Commission to ensure that JUC is providing safe, reliable and reasonable service per the Arizona Constitution, Article XV, Section 3 and A.R.S. §§ 40-202, 40-203, 40-321.

B. Upon receipt of all the above items, JUC shall make a subsequent filing in this docket, attaching written proof that all of the above conditions have been complied with. Once Staff verifies that JUC has met all of the above conditions, the Commission shall then, at a subsequent open meeting, approve the following three things:

- Deletion of AUSS' CC&N.
- Extension of JUC's CC&N into the area presently served by AUSS and consistent with the attached legal description upon notice of closing the transfer with AUSS.
- Approval of the transfer of the Utility Assets to JUC.

C. Until a showing by JUC that all the above conditions are met, JUC cannot and shall not serve in any of AUSS' service territory, except to provide bulk wholesale wastewater and/or bulk effluent treatment and disposal service per one or more agreements entered into by JUC as supported by Staff.

D. Approval of JUC's extension into the area presently served by AUSS shall also be subject to the following conditions:

- That JUC shall provide wastewater utility services in the extension area under its existing rates and charges.
- JUC shall file with Docket Control documentation of the transfer of the Utility Assets within 180 days of the decision approving the items in Section B above. The documentation shall include a detailed list of all of the assets transferred to JUC.
- That JUC shall provide safe and reliable service per all applicable Commission regulations and Arizona law.

E. In addition, JUC shall be allowed to defer the following costs into Account 186 – Miscellaneous Deferred Debits (i) any amounts for bulk wastewater treatment and effluent treatment and disposal services provided to AUSS and/or customers in the AUSS service territory for which JUC has not been paid and (ii) all reasonable costs associated with the acquisition of the Utility Assets and extension of JUC's CC&N to include the area presently certificated to AUSS. All such amounts shall be subject to verification by Staff and review by the Commission in JUC's next general rate filing to determine what costs are prudent and reasonable for future recovery and/or inclusion in rate base.

F. Since AUSS has filed for Chapter 7 Bankruptcy, in Bankruptcy Case No. 4:04-bk-03873-JMM, any transaction involving the transfer of the Utility Assets will be subject to the approval of the United States Bankruptcy Court, District of Arizona. Any Commission order that involves transfer of the Utility Assets will not take effect until all requisite approvals required by the Bankruptcy Court are obtained. Until all requisite approvals are obtained in all applicable jurisdictions, including from the Commission and from the United State Bankruptcy Court, AUSS will still be obligated to provide safe, adequate and reliable service to all of its certificated area.

# EXHIBIT A

AUSS SERVICE AREA INVENTORY		LINIAL FOOTAGE OF PIPE, NO. OF MANHOLES AND CO'S, NO.OF SERVICE TAPS				
ITEM	PROJECT	ADEQ NO.	15" S.L.	12 S.L.	10" S.L.	8" S.L.
1	Southwood Trunk Sewer	20030316	3648	7116	0	0
2	Los Praderas Collection system	20010265	0	0	0	10356
3	Los Praderas Lift Station & Force main		0	0	0	0
4	Cambria Parcel 1 thru 6		0	0	1805	26829
5	Cambria Lift Station	20000570	0	0	0	0
6	Meadow Vista Phase 1 &2	990573	0	0	0	3618
7	Castlegate Facilities Unknown					
8	Other Infrastructure Necessary for JUC to Serve					
9	Easements, Rights-of-way and Permits Necessary for JUC to Serve					



## EXHIBIT B

### LIST OF SUBDIVISIONS TO BE SERVED AT PECAN PLANT

Subdivision Name	ADEQ File No.
Pecan Creek N. - Parcel 1	20020580
Pecan Creek N. - Parcel 2	20020581
Pecan Creek N. - Parcel 3	20020582
Pecan Creek N. - Parcel 4	20020583
Pecan Creek N. - Parcel 5	20020584
Pecan Creek N. - Parcel 6	20020585
Pecan Creek N. - Parcel 7	20020586
Pecan Creek N. - Parcel 8	20020587
Castlegate Parcel 1	20020619
Castlegate Parcel 2	20020620
Castlegate Parcel 3	20010494
Castlegate Parcel 4	20020621
Castlegate Parcel 5	20010491
Castlegate Parcel 6	20010496
Castlegate Parcel 7	20010493
Castlegate Parcel 8	20030185
Castlegate Cottages P1	20010492
Castlegate Cottages P2	20010495
Castlegate Villages	20010507
Vineyard Estates	20030155
Wayne Ranch	20030492
Circle Cross Ran Parcel 1	20020420
Circle Cross Ran Parcel 2	20020421
Circle Cross Ran Parcel 3	20020422
Circle Cross Ran Parcel 4	20020423
Circle Cross Ran Parcel 5	20020424
Circle Cross Ran Parcel 6	20030122
Skyline Ranch Ph2, Parc A	20040301
Skyline Ranch Ph2, Parc B	20040303
Skyline Ranch Ph2, Parc C	20040305
Skyline Ranch Ph2, Parc D	20040306
Skyline Ranch Ph2, Parc E	20040349
Skyline Ranch Ph2, Parc F	20040350
Skyline Ranch Ph2, Parc G	20040351
Skyline Ranch Ph2, Parc H	20040304
Las Praderas, Ph 1 & 2	20010265
Meadow Vista SD	20040400
Cambria Parcel 1	20010092
Cambria Parcel 2	20000633
Cambria Parcel 3 Ph 1	20010093
Cambria Parcel 3 Ph 2	20010223
Cambria Parcel 4	20000416
Cambria Parcel 5	20000419

Cambria Parcel 6  
Cambria Parcel 7  
Laredo Ranch  
Links Estates Ph 1  
Links Estates Ph 2

20000417  
20000487  
TBD  
19940671  
19990294

1607227/51239.006

RECEIVED

MAY 17 2004

MEMORANDUM

RECEIVED

LEGAL

2004 MAY 17 A 10:10

TO:

Docket LEGAL DIV.  
ARIZONA CORPORATION COMMISSION  
Arizona Corporation Commission

AZ CORP COMMISSION  
DOCUMENT CONTROL

FROM:

Ernest G. Johnson  
Director  
Utilities Division

Date:

May 14, 2004

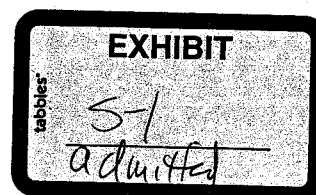
RE:

ARIZONA UTILITY SUPPLY & SERVICES, INC. AMENDED  
APPLICATION FOR TRANSFER OF A PORTION OF ITS CERTIFICATE OF  
CONVENIENCE AND NECESSITY TO JOHNSON UTILITIES L.L.C.  
(DOCKET NO. SW-04002A-02-0837 AND WS-02987A-02-0837)

Attached is the Staff Report for Arizona Utility Supply & Services, Inc. application for the Transfer of a Portion of its Certificate of Convenience and Necessity to Johnson Utilities L.L.C. Staff recommends approval of the transfer of a portion of the Certificate of Convenience and Necessity.

EGJ:JEF:hml

Originator: Jim Fisher



AUSSTransfer

Service List for: Arizona Utility Supply & Services, Inc. and Johnson Utilities, L.L.C.  
Docket Nos. SW-04002A-02-0837 and WS-02987A-02-0837

Mr. Maurice Lee  
Managing Member  
Arizona Utility Supply & Services, Inc.  
4002 E. Taro Lane  
Phoenix, Arizona 85050

Mr. George Johnson  
Johnson Utilities Company  
5230 East Shea Boulevard  
Phoenix, Arizona 85253

Mr. Jay L. Shapiro  
Fennemore Craig  
3003 North Central Ave.  
Suite 2600  
Phoenix, Arizona 85012  
Attorney of Johnson Utilities L.L.C.

Mr. Christopher C. Kempley  
Chief, Legal Division  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007

Mr. Ernest G. Johnson  
Director, Utilities Division  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007

Ms. Lyn Farmer  
Chief, Hearing Division  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007

STAFF REPORT  
UTILITIES DIVISION  
ARIZONA CORPORATION COMMISSION

ARIZONA UTILITY SUPPLY & SERVICES, INC.  
APPLICATION FOR APPROVAL OF THE TRANSFER  
OF A PORTION OF ITS CERTIFICATE OF CONVENIENCE  
AND NECESSITY TO JOHNSON UTILITIES L.L.C.

DOCKET NOS.  
SW-04002A-02-0837  
AND  
WS-02987A-02-0837

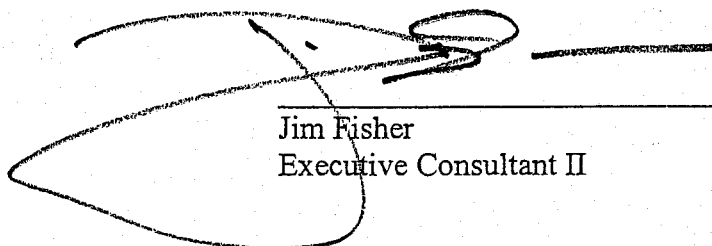
May 2004



## STAFF ACKNOWLEDGEMENT

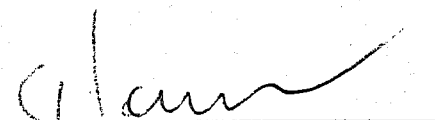
The Staff Report for Arizona Utility Supply & Services, L.L.C. (Docket Nos. SW-04002A-02-837 WS-02987A-02-0837) was the responsibility of the Staff members listed below. Jim Fisher was responsible for the review and analyses of the Company's application. Lyndon Hammon was responsible for the engineering and technical analysis.

### Contributing Staff:



---

Jim Fisher  
Executive Consultant II



---

Lyndon Hammon  
Utilities Engineer

**EXECUTIVE SUMMARY**  
**ARIZONA UTILITY SUPPLY & SERVICES, L.L.C.**  
**DOCKET NOS. SW-04002A-02-837**  
**WS-02987A-02-0837**

On February 22, 2002, Arizona Utility Supply and Service, L.L.C. ("AUSS" or "Company") filed an application with the Arizona Corporation Commission ("ACC" or "Commission") to modify Decision No. 64288 (December 31, 2001). On November 12, 2002, AUSS filed an application with the Commission requesting approval of the transfer of a portion of its Certificate of Convenience and Necessity ("CC&N") to Johnson Utilities Companies ("Johnson"), an authorized water and wastewater provider in portions of Pinal county.

In Decision No. 64288 (December 31, 2001) the Commission authorized AUSS to provide wastewater service to five sections within Pinal County. AUSS has requested the Commission modify its conditions for approval to be consistent with the regional wastewater plan approved in the Central Arizona Association of Governments ("CAAG") 208 Plan. AUSS is also seeking Commission authority to transfer Section 22 of its authorized CC&N to Johnson, as the CAAG 208 Plan has authorized Johnson to serve Section 22.

The Clean Water Act is a commitment by the federal government to the elimination of pollution in the nation's waters. Each state is required, under Section 208 of the Clean Water Act, to develop and implement area-wide water quality management plans for pollution control. CAAG has been designated the area wide water quality management planning agency for the Pinal and Gila County areas.

In conjunction with the requirements of the Clean Water Act, ADEQ issued Johnson an Aquifer Protection Permit ("APP"). On October 23, 2003, ADEQ completed its last Annual Compliance Inspection for Johnson's Wastewater Treatment Plant ("WWTP") to ensure Johnson was operating per the requirements of the APP and Reuse Permit. ADEQ found Johnson in compliance with all requirements.

The CAAG 208 Plan determined that Section 22 will be better served by a larger regional water reclamation plant, Pecan Water Reclamation Plant ("WRP"). AUSS intended that wastewater flows from its service areas would be treated by existing smaller plants, Cambria and Castlegate. AUSS informed ADEQ on June 12, 2003, that the Company and Johnson have entered into an agreement to treat wastewater flows intended for the Castlegate at the regional Pecan WRP.

On December 29, 2003, AUSS requested the Commission provide the Company until December 29, 2004, to obtain 208 Plan conformance as required by Decision No. 64288. AUSS also informed the Commission that the Castlegate and the Cambria wastewater treatment plants are no longer under consideration for construction, and therefore, any compliance issues should be removed.

On November 20, 2003, ADEQ conducted an annual inspection of the Meadow Vista WWTP. ADEQ issued AUSS a Notice of Violation ("NOV") for its failure to operate a

subsurface disposal of effluent. ADEQ found that standing effluent of approximately two (2) feet deep was in the leach field. ADEQ believes that AUSS has directed excess effluent to the leach field and caused standing effluent. ADEQ's November 20, 2003, NOV also found AUSS had not complied with operation and maintenance requirements, nor complied with monitoring and reporting requirements.

Staff recommends that the Commission modify Decision No. 64288 to remove the condition that AUSS file, within 365 days of the effective date of the decision, a copy of the ADEQ Certificate of Approval to Construct the Cambria Plant and the Castlegate Plant.

Staff recommends that the Commission approve AUSS Application to Transfer Section 22 of Township 2 South and Range 8 East to Johnson Utilities Company.

Staff recommends that the Commission Cancel AUSS CC&N for Section 22 of Township 2 South and Range 8 East.

Staff further recommends that the Commission require AUSS to show cause that the Commission should not revoke the CC&N provided in Decision No. 64288.

## TABLE OF CONTENTS

	<u>Page</u>
INTRODUCTION.....	1
BACKGROUND .....	1
AUSS FAILURE TO FILE ACC ANNUAL REPORT .....	2
AUSS - NOTICE OF VIOLATION .....	2
JOHNSON UTILITIES.....	3
JOHNSON'S ADEQ COMPLIANCE STATUS.....	3
JOHNSON'S ACC COMPLIANCE STATUS.....	4
AUSS REQUEST TO MODIFY DECISION NO. 64288 .....	5
CAAG 208 APPROVAL.....	6
ADEQ PERMITS.....	7
PECAN WATER RECLAMATION PLANT .....	8
AUSS PROPOSED TRANSFER TO JOHNSON.....	9
SUMMARY .....	9
RECOMMENDATIONS.....	10

## ATTACHMENTS

ENGINEERING MAP.....	1
----------------------	---

## Introduction

On February 22, 2002, Arizona Utility Supply and Service, L.L.C. ("AUSS" or "Company") filed an application with the Arizona Corporation Commission ("ACC" or "Commission") to modify Decision No. 64288 (December 31, 2001). On February 25, 2002, AUSS requested that the Commission modify Decision No. 64288 to provide the Company two (2) years with which to evidence ownership of property on which wastewater treatment plant assets are located, rather than the sixty (60) days provided by the Commission in the original decision.

On November 12, 2002, AUSS filed an application with the Arizona Corporation Commission ("ACC" or "Commission") requesting approval of the transfer of a portion of its Certificate of Convenience and Necessity ("CC&N") to Johnson Utilities Companies ("Johnson").

On April 16, 2003, AUSS filed a request with the Utilities Division to request an extension of time in which to file its 2002 Annual Report per the requirements of the Arizona Administrative Code ("A.A.C.") R14-2-610.D.4. On May 16, 2003, AUSS filed its revenue statements.

On August 27, 2003, AUSS filed an amended application with the Commission requesting approval of the transfer of a portion of its CC&N to Johnson. On September 26, 2003, Staff informed AUSS that the Amended Application was insufficient for administrative purposes and requested additional information from the applicant. On August 27, 2003, AUSS also filed an application with the Commission requesting approval to extend its CC&N to include two parcels contiguous to the northern boundary of its current CC&N.

On December 29, 2003, AUSS filed an amended request, asking the Commission to provide the Company until December 29, 2004 to obtain 208 Plan conformance as required by Decision No. 64288 (December 31, 2001).

On March 17, 2004, AUSS withdrew its application with the Commission requesting approval to extend its CC&N to include two parcels contiguous to the northern boundary of its current CC&N.

## Background

In Decision No. 64288 (December 31, 2001) the Commission authorized AUSS to provide wastewater service to five sections within Pinal County, specifically Sections 19, 20, 21, 22 and 30 of Township 2 South of Range 8 East.

By this application AUSS is seeking Commission authorization to modify the compliance requirements of Decision No. 64288 and transfer Section 22 of its CC&N to Johnson. The transfer area is generally located one mile north of Combs road, bounded on the east by Schneff Road, and south of Rittenhouse Auxillary Airfield.



AUSS is a Commission authorized wastewater provider and subject to the rules and regulations of the Commission. AUSS is currently providing service to the public.

#### **AUSS Failure to File ACC Annual Report**

AUSS is required to file an Annual Report with the Commission by April 15 of each year per the requirements of the Arizona Administrative Code ("A.A.C.") R14-2-610.D.4. To date AUSS has not filed its Annual Report due April 15, 2003. On April 16, 2003, AUSS filed a request with the Utilities Division to request an extension of time in which to file its 2002 Annual Report.

On April 16, 2003, Staff informed AUSS the Annual Report was due April 15 of each year and that any variance of the rule would require an order from the Commission. Staff further informed AUSS of the need to file the report and the related statements of revenue by May 1, 2003. AUSS was informed that statements of revenue are required by Arizona law to enable Staff to calculate the regulatory assessment.

On May 16, 2003, AUSS filed its revenue statements informing the Commission that the Company had obtained \$452,411 for the year ending December 31, 2002.

As of April 14, 2004, AUSS has not filed the required Annual Report or requested any variance from A.A.C. R14.-2-610.D.4.

#### **AUSS - Notice of Violation**

On September 17, 2002, the Arizona Department of Environmental Quality ("ADEQ") issued AUSS a Notice of Violation ("NOV") based on a site inspection of the Links Estates Wastewater Treatment Plant ("Links WWTP"). On September 16, 2003, ADEQ informed AUSS that most of the items of the NOV had been resolved, except for the transfer of the Aquifer Protection Permit ("APP") to AUSS.

On November 13, 2003, ADEQ issued AUSS another NOV for the unauthorized discharge of effluent to a common area of the Links WWTP. ADEQ had received a complaint of odor and conducted an inspection. On January 27, 2004, ADEQ informed AUSS that the NOV was closed as the Company had complied with ADEQ's requirements.

Subsequently, AUSS directed additional sewage flows to the Links WWTP. As a result the Links WWTP was unable to properly treat the sewage, resulting in what ADEQ has termed an "intolerable situation." On May 6, 2004, ADEQ confirmed an agreement with Johnson Utilities to assist ADEQ in resolving the problems with the AUSS system. Johnson Utilities agreed to accept wastewater and effluent from the AUSS service territory, and according to ADEQ will not be responsible for the odor, operational, or any violations occurring in the AUSS territory. As of May 14, 2004, Johnson Utilities was treating the wastewater and effluent of AUSS without compensation.

The Meadow Vista WWTP is owned and operated by AUSS to serve a portion of the CC&N. AUSS purchased the plant but failed to report to ADEQ in violation of the Arizona Administrative Code. On November 20, 2003, ADEQ conducted an annual inspection of the Meadow Vista WWTP and issued AUSS a NOV for failure to report a change in ownership. ADEQ's also found AUSS had not complied with operation and maintenance requirements, nor had it complied with monitoring and reporting requirements.

On November 20, 2003, ADEQ issued AUSS a NOV for its failure to operate a subsurface disposal of effluent. According to ADEQ, excess effluent from the Links WWTP (discussed above) was transported to the Meadow Vista WWTP for process. In addition, ADEQ previously issued AUSS a temporary permit to "vault and haul" sewage from the Castlegate subdivision, to the Meadows WWTP for treatment. ADEQ found that standing effluent of approximately two (2) feet deep was in the leach field and was caused by AUSS directing excess effluent to the leach field and caused standing effluent.

The ADEQ NOV has not been resolved by AUSS.

### **Johnson Utilities**

Johnson is a public service corporation providing water and wastewater service to a portion of the state of Arizona. The Commission provided Johnson with its original CC&N in Decision No. 60223 (May 27, 1997), and subsequently extended the CC&Ns in Decision Nos. 61069 (August 7, 1998) 62087 (November 19, 1999), 63960 (September 4, 2001) and 64062 (October 4, 2001).

The Commission has also denied previous Johnson requests to extend its CC&N, particularly Decision No. 64288 (December 28, 2001) which authorized AUSS the territory subject to this application.

According to Johnson's most recent Annual Report filing with the Commission's Utilities Division, Johnson has installed approximately \$45.8 million in water and wastewater plant to serve the current and future customers in the service area. Johnson reports a combined water and wastewater revenue of \$5.23 million, and reports a combined long term debt of less than \$1 million.

### **Johnson's ADEQ Compliance Status**

As fully explained below, wastewater treatment plants are regulated under a federal, state, and regional system to ensure the proper technology is deployed to meet the current and future needs of the community. Any owner and operator of a WWTP must obtain regional, state and federal approval of the WWTP and its operations, as part of the Clean Water Act.

In conjunction with the requirements of the Clean Water Act, the ADEQ issued Johnson Aquifer Protection Permit ("APP") No. P103081 and Reuse Permit No. R103081 as part of the

environmental permitting required for Johnson's Section 11 Wastewater Treatment Plant. On October 23, 2003, ADEQ completed its most recent Annual Compliance Inspection for Johnson's WWTP to ensure Johnson was operating per the requirements of the APP and Reuse Permit.

According to the ADEQ, 3,689 homes are connected to the sewer system. The WWTP was operating adequately and peak flows have exceeded 450,000 gallons per day ("GPD"). The facility has a design capacity of 1.6 million GPD, and CC&N is anticipated to eventually produce 2.4 million GPD.

The APP was amended June 12, 2002 and required construction of a new compliance monitoring well. Johnson has constructed the required compliance well and submitted the required data to ADEQ. ADEQ noted deficiencies from an October 6, 2003 file review were satisfied by Johnson in the October 23, 2003 inspection.

ADEQ reported that Johnson holds a Reuse Permit which allows the utility to discharge treated effluent, however, Johnson has not discharged to the reuse area, due to the use of the recharge basins.

The Compliance Summary of ADEQ for Johnson shows that the Monitoring and Reporting Requirements, the Reuse Permit, the Operator Certification Requirements, and Operation & Maintenance Requirements are in compliance.

#### **Johnson's ACC Compliance Status**

In Decision No. 60233, Johnson was required to comply with eight separate conditions. According to the Utilities Division Compliance Section, Johnson complied with all of the conditions.

In Decision No. 62087, Johnson was required to comply with three separate conditions. According to the Utilities Division Compliance Section, Johnson complied with all of the conditions.

In Decision No. 62284, Johnson was required to demonstrate compliance with ADEQ. According to the Utilities Division Compliance Section, Johnson demonstrated ADEQ compliance on August 25, 2000.

In Decision No. 64062, Johnson was required to comply with seven separate conditions. According to the Utilities Division Compliance Section, Johnson complied with all of the conditions.

In Decision No. 65480 (April 22, 2003) the Commission found that Johnson had failed to comply with ADEQ requirements and failed to timely inform the Commission of its ADEQ status as required. The Commission recognized Johnson's ADEQ civil penalty of \$80,000, and Consent Agreement as resolution of the compliance issues. The Commission further required

Johnson to file documentation demonstrating ADEQ compliance or any ADEQ violation. In addition the Commission required Staff to conduct an investigation into Johnson and recommend whether an Order to Show Cause against Johnson was warranted.

Johnson has consistently demonstrated that it is providing water and wastewater service to the public in accordance with the rules and regulations of the Commission, and in compliance with ADEQ.

#### **AUSS Request to Modify Decision No. 64288**

In Decision No. 64288 (December 31, 2001) the Commission authorized AUSS to provide wastewater service to a portion of Pinal County, subject to compliance with eight (8) conditions, AUSS has complied with three of the conditions and shown good reason why certain conditions are no longer needed in light of the changed circumstances related to the CAAG 208 regional planning for wastewater treatment.

The 8 conditions imposed on AUSS in Decision No. 64288 were:

1. That AUSS file a tariff of the authorized rates. (Complied)
2. That AUSS refund unauthorized hook-up fees of approximately \$185,000. (Complied)
3. That AUSS file, within 365 days of the effective date of the decision, a copy of its Pinal County franchise. (Complied)
4. That AUSS file, within 365 days of the effective date of the decision a copy of its approved EPA 208 Plan and ADEQ APP. (Non-compliance)
5. That AUSS file, within 365 days of the effective date of the decision a copy of the ADEQ Certificate of Approval to Construct the Cambria Plant. (Requirement is Moot based on AUSS use of Pecan WTP)
6. That AUSS file, within 2 years of the effective date of the decision a copy of the ADEQ Certificate of Approval to Construct the Castlegate Plant. (Requirement is Moot based on AUSS use of Pecan WTP and Commission transfer of Section 22)
7. That AUSS file, within 5 years of the effective date of the decision a copy of the ADEQ Certificate of Approval to Construct the regional treatment plants. (Requirement should be revised to reflect Pecan WTP)
8. That AUSS file documentation that it has acquired the Links wastewater plant, and the Cambria wastewater plant within sixty days of the decision in this matter, in the event such documentation was not provided in a timely manner,

the Certificate of Convenience and Necessity shall be rendered null and void without further order by the Commission. (Non-compliance)

On February 22, 2002, AUSS filed a status report on compliance with the Commission's Order. AUSS timely filed the tariff rates as required in Finding of Fact No. 78. (Condition 1). Utilities Division Staff found it in compliance with ACC requirements. AUSS also provided a copy of a check in the amount of \$183,467 demonstrating a full refund of the unauthorized Hook-up charges as required by Finding of Fact No. 82. (Condition 2). In addition the Company filed with copies of its Pinal County franchise as required. (Condition 3).

The February 22, 2002 AUSS compliance filing also included the Company's request for a 90 day extension of time to complete negotiations for the transfer of certain wastewater treatment assets to AUSS to comply with Decision No. 64288. (Condition 8)

On February 25, 2002, the Company modified its requested extension of time to comply with evidencing ownership of the utility assets. AUSS requested that the Commission modify Decision No. 64288 to provide the Company two (2) years with which to evidence ownership of property on which the Links assets are located, rather than the sixty (60) days provided by the Commission.

To support the request for an extension of time AUSS provided copies of a February 21, 2002 Bill of Sale for the Links system, however, the treatment facility is located on leased property. Pursuant to the agreement with the Ocotillo Homeowners Association, the Company obtained two years with which to relocate the facilities from the leased property.

On December 29, 2003, AUSS requested the Commission provide the Company until December 29, 2004 to obtain 208 Plan conformance as required by Decision No. 64288. AUSS also informed the Commission that the Castlegate and the Cambria wastewater treatment plants are no longer under consideration for construction and therefore any compliance issues should be removed.

### **CAAG 208 Approval**

The Water Quality Act of 1987 ("Clean Water Act") is a commitment by the federal government towards the elimination of pollution in the nation's waters. Each state is required, under Section 208 of the Clean Water Act, to develop and implement area-wide water quality management plans for pollution control.

In Arizona, 6 Councils of Government, ("COGs") have been designated by the Governor as "Water Quality Management Planning Agencies" under Section 208 of the Clean Water Act. The Central Arizona Association of Governments ("CAAG") has been designated the area wide water quality management planning agency for the Pinal and Gila County areas. Therefore, AUSS and Johnson are required to offer wastewater service consistent with the CAAG 208 Plan.



The guidelines for 208 planning set forth in the Clean Water Act are fairly broad so that the various water quality issues in different areas of the nation can be addressed appropriately. Each 208 Plan must identify the water quality management needs in its planning area and provide a program to develop solutions. The CAAG 208 planning process is an ongoing effort in response to changing water resource issues, regulations, treatment technologies and changing demographics.

### **ADEQ Permits**

A major effort of the CAAG 208 Plan is the Point Source Plan. Point Source planning is primarily directed at compiling the preferred wastewater collection and treatment system for the Pinal county area through the year 2020. Toward that end, the Point Source Plan examines population and wastewater flow projections, treatment methods, effluent disposal, reclaimed water reuse and sludge management.

ADEQ defines, monitors and enforces water quality standards for protected uses of surface waters, aquifers and public water supplies. The ADEQ permit framework for point source management consists of three primary elements consisting of Arizona Pollutant Discharge Elimination System ("AZPDES") the APP and the reclaimed water reuse permit program. The purpose of the AZPDES permit programs is to regulate the quality of point source discharges into the waters of the nation. Based on specific criteria, discharges to rivers, dry washes and various lakes and canals within the affected area are subject to the AZPDES permit program provisions.

The APP was established by the Environmental Quality Act of 1986 and implemented by rule in 1989. The purpose of the APP program is to protect the groundwater quality and public health from potential environmental risks posed by the facilities that discharge pollutants to the land surface, underlying soil, or groundwater that have a potential to reach an aquifer.

The APP permitting requirements are determined based on the type of facility or land use, capacity of the facility, and/or the type of discharges that the facility will produce. The most crucial requirements for obtaining an APP are demonstrating that the Best Available Demonstrated Control Technology ("BADCT") will be used to minimize the discharge of pollutants, Aquifer Water Quality Standards will not be violated and that the facility possesses the financial and technical capability to comply with the permit conditions.

The Environmental Quality Act requires that all domestic wastewater and disposal facilities requiring an APP use BADCT as part of their wastewater treatment process. The ADEQ adopted BADCT requirements for new sewage treatment facilities. The design review of sewage treatment facilities has been consolidated into the APP application review process. The BADCT requirements are defined within the rules for secondary treatment, pathogen removal for new facilities and major modifications to older facilities. The APP rule took effect January 2001.

The reclaimed water use permit program, established in 1985, allows the reuse of reclaimed water for a variety of applications such as agriculture, urban lakes, golf course irrigation, ponds and industrial uses. Water reclamation plants are required by rules to have a reuse permit for the release of reclaimed water for reuse purposes.

There are two main categories of reclaimed water reuse including direct non-potable reuse and indirect reuse. Direct reuse consists of irrigation and makeup water for urban lakes. Indirect reuse typically involves aquifer recharge and recovery. The indirect reuse of reclaimed water usually involves recharge to an aquifer for storage and future recovery. The reclaimed water is typically allowed to infiltrate through the dry soils above the aquifer allowing additional treatment. Recharge projects using reclaimed water are required to obtain an APP.

### **Pecan Water Reclamation Plant**

AUSS has requested the Commission modify its conditions for approval to be consistent with the regional wastewater plan approved in the CAAG 208 Plan. AUSS intended to serve its CC&N with wastewater treatment plants at the Cambria and at Castlegate. AUSS no longer has any need for the construction, or approval of Cambria or Castlegood wastewater treatment plants to participate in Pecan WRP, a larger, CAAG 208 approved regional water reclamation plant.

The CAAG 208 Plan has found that the service area will be better served by a larger regional water reclamation plant, Pecan WRP. AUSS intended that wastewater flows from its service areas would be treated by existing smaller plants, Cambria and Castlegate. AUSS informed the ADEQ on June 12, 2003, that the Company and Johnson have entered into an agreement to treat wastewater flows intended for the Castlegate at the regional Pecan WRP.

AUSS and Johnson jointly constructed the Pecan WRP. Johnson and AUSS have entered into service agreements by which the companies respective service areas will be served by a regional treatment plant, rather than the previously authorized small plants. Johnson and AUSS have worked cooperatively to obtain regulatory approvals, construct the regional plant, and reconfigure collection facilities to ensure proper service to the community. AUSS and Johnson have also entered into an agreement in which AUSS will construct collection facilities to direct wastewater flows to be treated at the Pecan WRP.

CAAG recognized the long term treatment capabilities of the Pecan WRP will provide a greater benefit to the service area, than would the previously approved smaller waste water treatment plants, including Castlegate and Cambria.

According to the AUSS 208 Plan Amendment of September 2003, the Pecan WRP will be located in Section 29 and initially service approximately 1,280 acres in the planned area development. When the plant is fully developed Pecan WRP will provide service for approximately 10,000 acres of mixed use development extending from Ellsworth Road to Sierra Vista Drive, and Germann Road to Roberts Road.

As described above, the CAAG 208 approval process, in conjunction with state certification, requires that the owners and operators of Pecan WRP obtain the necessary APP, Reuse Permits, BADCT conformance, and AZPDES permit. Staff recommends that the Commission require Johnson to file a copy of the ADEQ APP for the Pecan WRP within 365 days of any decision in this matter.

### **AUSS Proposed Transfer to Johnson**

AUSS is seeking Commission authority to transfer Section 22 of its authorized CC&N, generally located one mile north of Combs road, bounded on the east by Schneff Road, and south of Rittenhouse Auxillary Airfield to Johnson. On January 23, 2002, CAAG refused to approve AUSS's Plan 208 Amendment to serve Section 22. The CAAG 208 Plan has authorized Johnson to serve Section 22.

According to the AUSS Amended Application to the Commission, the Company has not begun serving any customers in the proposed transfer area. Therefore, no security deposits have been collected by AUSS in Section 22. In addition, AUSS has not entered into any Main Extension Agreements nor are there any service line refunds due to any customer in Section 22.

On December 29, 2003, AUSS filed a copy of its September 2003 Plan Amendment for the Central Arizona Association of Governments 208 Water Quality approval process. According to AUSS amendment, Section 22 has two Planned Area Developments ("PAD"), Castlegate and Summer Ridge.

Castlegate is located in the northern half of the section and is to consist of approximately 276 acres. The subdivision is to consist of 1,409 medium to high density residential dwelling units, some commercial sites, and a 12-acre elementary school site. The elementary school site is to be developed in 10 phases.

Summer Ridge is a proposed subdivision of approximately 100 acres that is to developed in 350 single family homes.

Section 22 also includes a gravel mine of approximately 237 acres. The mine is regulated by ADEQ and Pinal County for runoff associated with the chemicals used.

### **Summary**

As discussed above, ADEQ has issued AUSS NOVs for its operation of wastewater treatment plants in violation of applicable codes. AUSS has failed to transfer ownership and has failed to monitor and report the performance of its treatment plants as required by the terms of the APP.

Staff believes that AUSS has failed to meet its obligations as a public service company authorized in Commission Decision No. 64288. AUSS has failed to transfer assets, operate assets, report and comply with ADEQ and the Commission.

Staff recommends the Commission require AUSS to show cause (i.e. produce evidence) that it is a fit and proper entity and that it is in the public interest to retain the CC&N issued in Decision No. 64288.

### **Recommendations**

Staff recommends that the Commission modify Decision No. 64288 to remove the condition that AUSS file, within 365 days of the effective date of the decision a copy of the ADEQ Certificate of Approval to Construct the Cambria Plant and the Castlegate Plant.

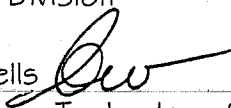
Staff recommends that the Commission approve AUSS Application to Transfer Section 22 of Township 2 South and Range 8 East to Johnson Utilities Company.

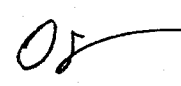
Staff recommends that the Commission cancel AUSS's CC&N for Section 22 of Township 2 South and Range 8 East.

Staff further recommends that the Commission require AUSS to Show Cause that the Commission should not revoke the CC&N provided in Decision No. 64288.

## MEMORANDUM

TO: Jim Fisher  
Executive Consultant II  
Utilities Division

FROM: Barb Wells   
Information Technology Specialist  
Utilities Division

THRU: Del Smith   
Engineering Supervisor  
Utilities Division

DATE: September 18, 2003

RE: **ARIZONA UTILITY SUPPLY & SERVICES, LLC (DOCKET NO. SW-04002A-02-0837)**  
**JOHNSON UTILITIES (DOCKET NO. WS-02987A-02-0837)**

Arizona Utility has filed an application to transfer part of its CC&N to Johnson Utilities. Attached is an amended legal description for the area that is to be transferred. This amended description has been docketed by the company and should be used in place of the original description submitted with the application.

Also attached is a copy of the map for your files.

:bsw

Attachments

cc: Docket Control  
Mr. Maurice Lee  
Deb Person (Hand-Carried)  
File

# **COUNTY of Pinal**

## **RANGE 8 East**

## **TOWNSHIP 2 South**

**Sewer**

WS-2987 (6)

Johnson Utilities Company

**Sewer**

SW-4002 (1)

Arizona Utility Supply & Services, LLC

**Sewer**

Arizona Utility Supply & Services  
Docket No. SW-4002-02-837  
Application to Transfer to Johnson Utilities  
Docket No. WS-2987-02-837

1	2	3	4	5	6
12	11	10	9	8	7
13	14	15	16	17	18
24	23	22	21	20	19
25	26	27	28	29	30
36	35	34	33	32	31

T. List names and addresses of any other public utility interest Transferee has:

1. To be furnished by Transferee by 12/1/02

2. \_\_\_\_\_

U. Indicate the date that notice of the application was sent, or will be sent to the customers.

December 1, , 2003

Note:

This application is necessary as Arizona Utility Supply & Services, LLC has been unable to acquire the 208 Amendment by Central Arizona Association of Governments (CAAG)

AREA TO BE TRANSFERED

LEGAL DESCRIPTION

ALL OF SECTION 22 TOWNSHIP 2 SOUTH, RANGE  
8 EAST OF THE GILA AND SALT RIVER BASE and  
MERIDIAN, PINAL COUNTY, ARIZONA.

MEMORANDUM

LEGAL

RECEIVED

2004 JUN 29 P 3: 04

TO: Docket Control  
FROM: Ernest G. Johnson *EGJ*  
Director  
Utilities Division

RECEIVED

JUN 29 2004

LEGAL DIV.  
ARIZ. CORPORATION COMMISSION

AZ CORP COMMISSION  
DOCUMENT CONTROL

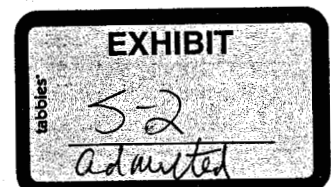
Date: June 29, 2004

RE: ARIZONA UTILITY SUPPLY & SERVICES, INC. APPLICATION FOR  
TRANSFER OF ITS CERTIFICATE OF CONVENIENCE AND NECESSITY TO  
JOHNSON UTILITIES L.L.C. (DOCKET NO. WS-02987A-04-0465 AND SW-  
04602A-04-0465)

Attached is the Staff Report for Arizona Utility Supply & Services, Inc. application for the transfer of certain of its assets to Johnson Utilities L.L.C., cancellation of its, and extension of Johnson Utilities, L.L.C. Certificate of Convenience and Necessity ("CC&N"). Staff recommends approval of the transfer of assets, extension of the Johnson Utilities L.L.C. CC&N and cancellation of the AUSS CC&N.

EGJ:JEF:lhbm

Originator: Jim Fisher





Service List for: Arizona Utility Supply & Services, Inc. and Johnson Utilities, L.L.C.  
Docket Nos. WS-02987A-04-0465 and SW-04002A-04-0465

Mr. Maurice Lee  
Managing Member  
Arizona Utility Supply & Services, LLC  
4002 East Taro Lane  
Phoenix, Arizona 85050

Mr. Jeffery Zimmerman  
Moyes Store  
1850 North Central Avenue, Suite 1100  
Phoenix, Arizona 85004  
Attorney of Arizona Utility Supply & Services, LLC

Mr. George Johnson  
Johnson Utilities Company  
5230 East Shea Boulevard  
Phoenix, Arizona 85253

Mr. Jay L. Shapiro  
Fennemore Craig  
3003 North Central Avenue, Suite 2600  
Phoenix, Arizona 85012  
Attorney of Johnson Utilities L.L.C.

Mr. Christopher C. Kempley  
Chief, Legal Division  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007

Mr. Ernest G. Johnson  
Director, Utilities Division  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007

Ms. Lyn Farmer  
Chief, Hearing Division  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007

STAFF REPORT  
UTILITIES DIVISION  
ARIZONA CORPORATION COMMISSION

ARIZONA UTILITY SUPPLY & SERVICES, INC.  
APPLICATION FOR APPROVAL OF THE TRANSFER  
OF ITS CERTIFICATE OF CONVENIENCE  
AND NECESSITY TO JOHNSON UTILITIES L.L.C.

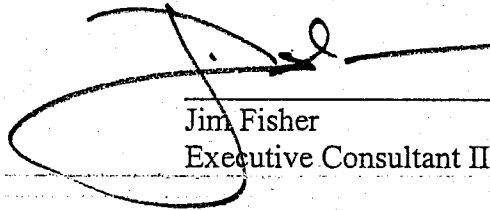
DOCKET NOS.  
WS-02987A-04-0465 AND SW-04002A-04-0465

June 2004

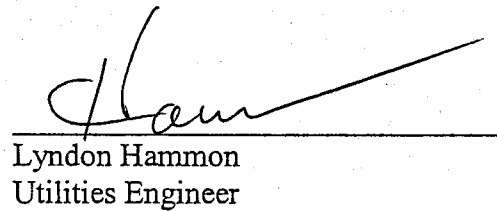
## STAFF ACKNOWLEDGEMENT

The Staff Report for Arizona Utility Supply & Services, L.L.C. and Johnson Utilities, L.L.C. (Docket Nos. WS-02987A-04-0465 and SW-04002A-04-0465) was the responsibility of the Staff members listed below. Jim Fisher was responsible for the review and analysis of the Company's application. Lyndon Hammon was responsible for the engineering and technical analysis.

Contributing Staff:



Jim Fisher  
Executive Consultant II



Lyndon Hammon  
Utilities Engineer

**EXECUTIVE SUMMARY**  
**ARIZONA UTILITY SUPPLY & SERVICES, L.L.C.**  
**AND JOHNSON UTILITIES L.L.C.**  
**DOCKET NOS. WS-02987A-04-0465 and SW-04002A-04-0465**

On June 22, 2004, Arizona Utility Supply and Service, L.L.C. ("AUSS" or "Company") filed an application with the Arizona Corporation Commission ("ACC" or "Commission") to transfer its Certificate of Convenience and Necessity ("CC&N") to Johnson Utilities L.L.C. ("Johnson"). On May 17, 2004, in Docket Nos. SW-04002A-02-0837 and WS-02987A-02-0837, Staff filed a report recommending the Commission approve AUSS' application to transfer a portion of its CC&N to Johnson. Staff also requested the Commission to authorize a Show Cause proceeding in which AUSS would be required to show cause to retain its CC&N.

On May 4, 2004, Arizona Department of Environmental Quality ("ADEQ"), Staff and representatives of Johnson discussed AUSS' operational problems and Johnson's ability to provide a possible solution. On June 4, 2004, ADEQ, Staff and representatives of Johnson and AUSS discussed the operational problems of AUSS and Johnson's ability to resolve immediate concerns.

On June 9, 2004, Johnson agreed to eliminate the emergency situation with AUSS by treating wastewater flows and existing effluent. On June 11, 2004, AUSS and Johnson agreed to a Bulk Wastewater Treatment and Effluent Disposal Agreement ("Agreement") which, in part, provided Johnson with compensation for treatment services and required AUSS to request transfer of its CC&N to Johnson. AUSS agreed to pay Johnson \$30 for each residential service and \$3.53 per 1,000 gallons of effluent treated. AUSS provided a security deposit of \$25,000.

By this application, AUSS is seeking Commission authorization to transfer certain of its assets to Johnson. AUSS is seeking to cancel its CC&N and Johnson is seeking to extend its CC&N to include the area currently certificated to AUSS. The Agreement provides, in part, that upon Commission approval of the AUSS transfer, AUSS will execute a bill of sale to convey title, at no cost to Johnson, other than developer refund obligations. AUSS is required to demonstrate all conveyed facilities are free and clear of all encumbrances, have proper permits and located in recorded easements.

Staff recommends that the Commission approve AUSS' Application to transfer its used and useful assets to Johnson Utilities, L.L.C. subject to the following conditions:

1. That AUSS and Johnson Utilities L.L.C. file with Docket Control documentation of closing the sale of assets within 180 days of any decision in this matter. The documentation shall include a detailed list of the assets transferred.
2. That AUSS and Johnson Utilities L.L.C. file with Docket Control monthly reports on the wastewater treated, amounts billed, and amounts paid for service until the asset transfer is closed. The monthly reports shall be due 15 days after each calendar month.

3. That AUSS file by December 31, 2005, with Docket Control, evidence of satisfying the terms and conditions of the Arizona Department of Environmental Quality Closure Agreement related to AUSS' wastewater facilities.

Staff recommends that the Commission authorize Johnson Utilities L.L.C. to extend its CC&N consistent with the attached legal description upon notice of closing the transfer with AUSS.

Staff recommends that the Commission cancel AUSS' CC&N consistent with the attached legal description



## TABLE OF CONTENTS

	<u>Page</u>
<b>Introduction.....</b>	<b>1</b>
<b>Background .....</b>	<b>2</b>
<b>Bulk Wastewater Treatment Agreement.....</b>	<b>2</b>
<b>Summary.....</b>	<b>4</b>
<b>Recommendations.....</b>	<b>4</b>

## ATTACHMENTS

Engineering Map and Legal Description .....	A
ADEQ letter of May 6, 2004, to Johnson Utilities, Re: AUSS.....	B
AUSS-Johnson Utilities Bulk Wastewater Agreement.....	C
Staff letter of June 24, 2004, to Johnson Utilities, Re: Emergency Service – AUSS.....	D
Johnson Utilities letter of June 24, 2004, Re: Intent of Application.....	E
May 17, 2004, Staff Report in Docket No. SW-04002A-02-0837 and WS-02987A-02-0837 .....	F

## Introduction

On June 22, 2004, Arizona Utility Supply and Service, L.L.C. ("AUSS" or "Company") filed an application with the Arizona Corporation Commission ("ACC" or "Commission") to transfer its Certificate of Convenience and Necessity ("CC&N") to Johnson Utilities L.L.C. ("Johnson"). On June 24, 2004, Johnson provided Staff a letter of explanation which clarified the intent of the application is to transfer certain assets, extend Johnson's CC&N to include the AUSS service territory and cancel the AUSS CC&N.

On May 17, 2004, Staff filed a report recommending the Commission approve AUSS' application to transfer Section 22 to Johnson. Staff also requested the Commission to authorize a Show Cause proceeding in which AUSS would be required to show cause to retain its CC&N in light of its Arizona Department of Environmental Quality ("ADEQ") and Commission violations. (See Docket Nos. SW-04002A-02-0837 and WS-02987A-02-0837.)

On May 4, 2004, ADEQ, Staff and representatives of Johnson discussed AUSS' operational problems and Johnson as a possible solution to the issues.

On June 3, 2004, a Procedural Order was issued in Docket Nos. SW-04002A-02-0837 and WS-02987A-02-0837 setting the matter for a July, 9, 2004, hearing.

On June 4, 2004, ADEQ, Staff and representatives of Johnson and AUSS discussed the operational problems of AUSS and Johnson's ability to resolve immediate concerns for public safety.

On June 8, 2004, Staff requested the hearing date established for Docket Nos. SW-04002A-02-0837 and WS-02987A-02-0837 be accelerated.

On June 9, 2004, ADEQ, Staff and representatives of Johnson and AUSS discussed the operational problems of AUSS and Johnson's ability to resolve immediate concerns. Johnson agreed to eliminate the emergency situation with AUSS by treating wastewater flows and existing effluent.

On June 11, 2004, AUSS and Johnson agreed to a Bulk Wastewater Treatment and Effluent Disposal Agreement which, in part, provided Johnson with compensation for treatment services and required AUSS to request transfer of its CC&N to Johnson.

On June 17, 2004, a Procedural Order was issued in Docket Nos. SW-04002A-02-0837 and WS-02987A-02-0837, setting the matter for a July, 16, 2004, hearing in response to scheduling conflicts and Johnson's elimination of the emergency situation.

On June 22, 2004, AUSS filed its application for Commission approval to transfer all of the CC&N to Johnson.

## **Background**

AUSS is an Arizona Limited Liability Company ("LLC") which is owned by Mr. Maurice Lee and Mr. Stephan Kohner. Mr. Kohner's ownership in AUSS is through his ownership in STM Holdings, LLC, which owns SAK Investments LLC, which owns SAK Family Limited Partnership, which owns interest in AUSS. In Decision No. 64288 (December 31, 2001), the Commission authorized AUSS to provide wastewater service to five sections within Pinal County; specifically, Sections 19, 20, 21, 22 and 30 of Township 2 South of Range 8 East.

Johnson is a public service corporation providing water and wastewater service to a portion of the state of Arizona. The Commission provided Johnson with its original CC&N in Decision No. 60223 (May 27, 1997), and subsequently extended the CC&Ns in Decision Nos. 61069 (August 7, 1998), 62087 (November 19, 1999), 63960 (September 4, 2001) and 64062 (October 4, 2001).

By this application, AUSS and Johnson are seeking Commission authorization to transfer certain assets, extend Johnson's CC&N to include the AUSS service territory and cancel the AUSS CC&N. AUSS is currently scheduled for a hearing on July 16, 2004, in Docket Nos. SW-04002A-02-0837 and WS-02987A-02-0837. Staff issued a report on the application May 17, 2004, which provides a complete background on AUSS' and Johnson. The report recommended approval of the transfer of a portion of the existing CC&N and sought Commission approval to begin a show cause proceeding against AUSS.

Staff recommends that this Staff Report be read in conjunction with the May 17, 2004 AUSS Staff Report.

## **Bulk Wastewater Treatment Agreement**

On May 4, 2004, ADEQ, Staff and representatives of Johnson discussed AUSS' operational problems and Johnson as a possible solution to the issues. AUSS' treatment facilities were unable to properly treat wastewater flows resulting in approximately 2 million gallons of effluent that exceeded regulatory standards and was not allowed to be discharged. AUSS' treatment ponds were close to capacity.

Johnson's service territory is adjacent to AUSS. Johnson has constructed and interconnected three wastewater treatment plants ("WWTP") to serve the CC&N. Johnson is able to take AUSS wastewater and effluent for re-treatment, into its system and treat the flows at either the Pecan Water Reclamation Plant ("WRP"), or at the Section 11 WWTP.

On May 4, 2004, ADEQ, Staff and Johnson discussed Johnson's ability to begin treatment of AUSS' wastewater. Johnson agreed to take AUSS wastewater flows on a temporary basis.

On May, 6, 2004, Ms. Karen Smith, Director Water Quality Division of the ADEQ wrote Johnson to confirm ADEQ's position on Johnson's services for AUSS. Ms. Smith wrote in part:

To confirm our understanding, Johnson Utilities will accept wastewater and effluent from the AUSS service area, on a temporary basis, to eliminate the existing problems in that area, specifically at the Links Wastewater Treatment Plant, the Meadow Vista Wastewater Treatment Plant, and the Cambria Lift Station.

The Department agrees that Johnson Utilities will not be held responsible for any violations of environmental regulations which have occurred or are now occurring within the AUSS service area, and are not responsible for the odor and operational problems at the Links Wastewater Treatment Plant, the Meadow Vista Wastewater Treatment Plant, and the Cambria Lift Station, or any other facility owned and operated by AUSS.

Again, let me extend our appreciation for the assistance Johnson Utilities is providing to alleviate this very problematic situation.

On June 4, 2004, ADEQ, Staff and representatives of Johnson and AUSS discussed the ongoing operational problems of AUSS and Johnson's concerns with AUSS. Johnson and AUSS were unable to resolve wholesale rates and charges for the services Johnson provided AUSS, resulting in Johnson treating in excess of 2 million gallon without compensation. AUSS informed ADEQ, Staff and Johnson that terms for service were unacceptable. Johnson informed AUSS that service could not continue without a compensation agreement.

On June 8, 2004, Staff requested the hearing date established for Docket Nos. SW-04002A-02-0837 and WS-02987A-02-0837 be accelerated.

On June 9, 2004, ADEQ, Staff, representatives of Johnson and AUSS again discussed the operational problems of AUSS, Johnson's concerns with AUSS and Johnson's ability to resolve the problem. AUSS and Johnson discussed a proposed service agreement with Staff and ADEQ. AUSS, Johnson, Staff and ADEQ supported the agreement. Johnson agreed to eliminate the emergency situation with AUSS by treating wastewater flows and existing effluent.

On June 11, 2004, AUSS and Johnson agreed to a Bulk Wastewater Treatment and Effluent Disposal Agreement ("Agreement") which, in part, provided Johnson with compensation for treatment services and required AUSS to request transfer of its CC&N to Johnson.

According to the Agreement, Johnson is willing to provide limited bulk wastewater and effluent treatment to AUSS and AUSS acknowledged that it lacks adequate wastewater treatment capacity. The Agreement is for a term of 180 days or until the Commission authorizes the transfer of Section 22. Effluent disposal is for a term of 30 days from date of the Agreement,

and Johnson has the right to terminate effluent treatment service upon 10 days notice if effluent materially interferes with the operation of Pecan WRP.

AUSS agreed to pay Johnson \$30 for each residential service and \$3.53 per 1,000 gallons of effluent treated. AUSS provided a security deposit of \$25,000. AUSS also assigned its accounts receivable and provided Johnson with the option to direct bill customers in the event AUSS defaults on the Agreement.

According to Section C. of the Agreement, AUSS desires to transfer all of its useful assets and CC&N to Johnson. Section 7.b. provides that upon Commission approval of the AUSS transfer, AUSS will execute a bill of sale to convey title, at no cost to Johnson, other than developer refund obligations. AUSS is required to demonstrate all conveyed facilities are free and clear of all encumbrances, have proper permits and located in recorded easements.

On June 21, 2004, ADEQ informed Staff that one of the once almost overflowing effluent ponds had been drained.

### **Summary**

AUSS has failed to operate per the terms and condition of its CC&N. ADEQ requested Johnson to provide service to AUSS to eliminate effluent discharge and odor problems plaguing AUSS' service territory. On June 11, 2004, AUSS and Johnson agreed to terms on service and transferring the CC&N to Johnson.

Johnson operates a wastewater treatment plant that is providing service to the public consistent with the requirements of the ADEQ and the Commission. Transferring the assets of AUSS to Johnson, canceling the AUSS CC&N, and extending Johnson Utilities Company CC&N to include the area will ensure proper wastewater service is provided.

### **Recommendations**

Staff recommends that the Commission approve AUSS Application to transfer its used and useful assets to Johnson Utilities Company subject to the following conditions:

1. That AUSS and Johnson Utilities L.L.C. file with Docket Control documentation of closing the sale of assets within 180 days of any decision in this matter. The documentation shall include a detailed list of the assets transferred.
2. That AUSS and Johnson Utilities L.L.C. file with Docket Control monthly reports on the wastewater treated, amounts billed, and amounts paid for service until the asset transfer is closed. The monthly reports shall be due 15 days after each calendar month.



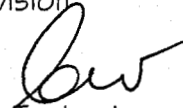
3. That AUSS file by December 31, 2005, with Docket Control, evidence of satisfying the terms and conditions of the Arizona Department of Environmental Quality Closure Agreement related to AUSS' wastewater facilities.

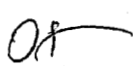
Staff recommends that the Commission authorize Johnson Utilities L.L.C. to extend its CC&N consistent with the attached legal description upon notice of closing the transfer with AUSS.

Staff recommends that the Commission cancel AUSS' CC&N consistent with the attached legal description

**MEMORANDUM**

TO: Jim Fisher  
Executive Consultant II  
Utilities Division

FROM: Barb Wells   
Information Technology Specialist  
Utilities Division

THRU: Del Smith   
Engineering Supervisor  
Utilities Division

DATE: June 28, 2004

RE: **ARIZONA UTILITY SUPPLY & SERVICES, LLC (DOCKET NO. SW-04002A-04-0465)**  
**JOHNSON UTILITIES COMPANY (DOCKET NO. WS-02987A-04-0465)**

Arizona Utility Supply & Services has filed an application to transfer its CC#N to Johnson Utilities Company. A copy of the legal description for the area to be transferred is attached. This description transfers all of Arizona Utility's service area except Section 22, Township 2 South, Range 8 East, Pinal County, which is being transferred in a separate docket.

Also attached is a copy of the map for your files.

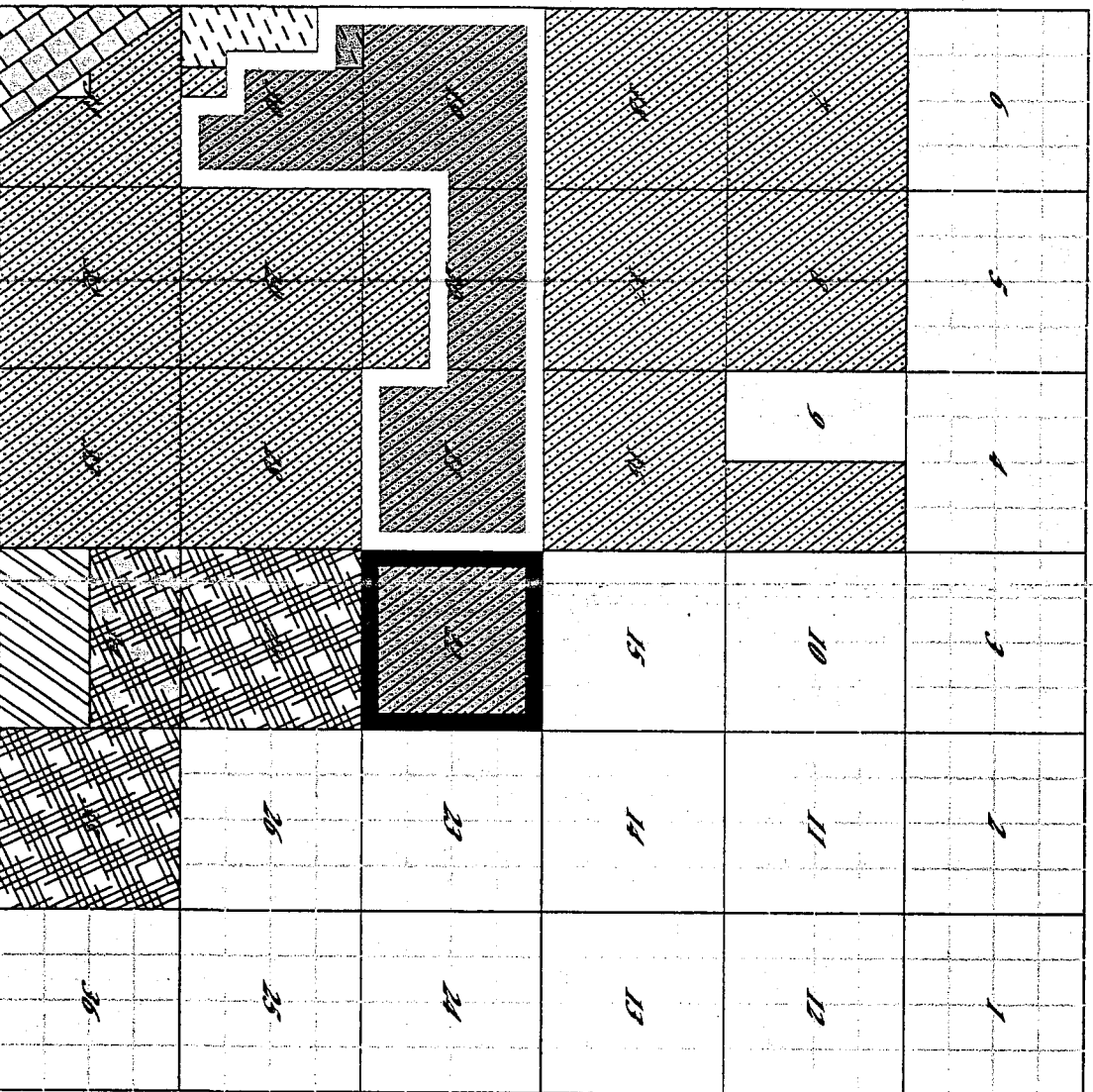
:bsw

Attachment

cc: Docket Control  
Mr. Maurice Lee  
Mr. Jay Shapiro  
Ms. Deb Person (Hand-Carried)  
File

# COUNTY of Pinal

## RANGE 8 East



## TOWNSHIP 2 South



WS-2987 (6)

Johnson Utilities Company



SW-4002 (1)

Arizona Utility Supply & Services, LLC



W-2859 (3)

Diversified Water Utilities, Inc.



W-2234 (2)

H<sub>2</sub>O, Inc.



W-1395 (2)

Queen Creek Water Company



W-2425 (2)

Sun Valley Farms Unit VI Water Company



Arizona Utility Supply & Services

Docket No. SW-4002-02-837

Application to Transfer to Johnson Utilities

Docket No. WS-2987-02-837

Arizona Utility Supply & Services

Docket No. SW-4002-04-465

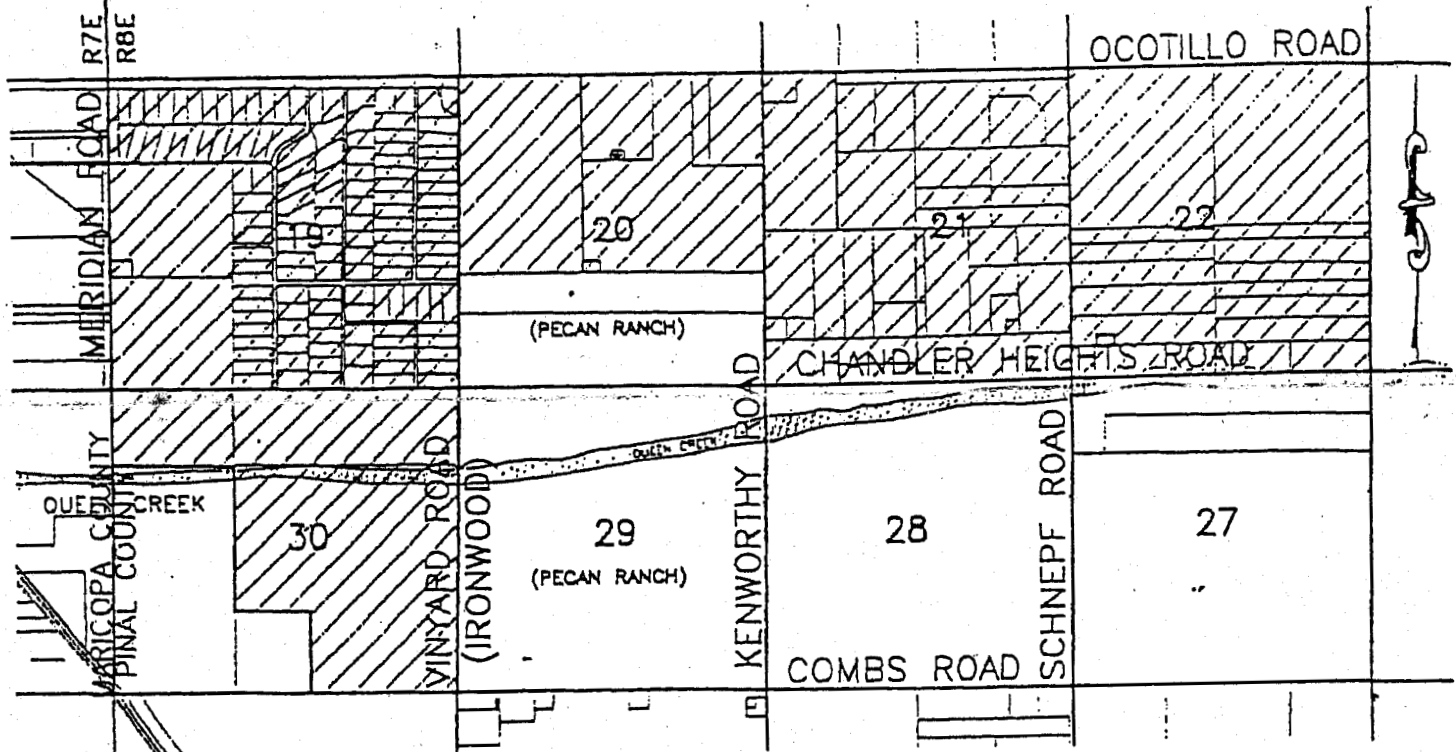
Application to Transfer to Johnson Utilities

Docket No. WS-2987-04-465

# ARIZONA UTILITY SUPPLY & SERVICES, LLC

## LEGAL DESCRIPTION FOR

Application to  
Transfer of Convenience and Necessity  
SW-04002A



## LEGAL DESCRIPTION

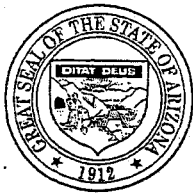
ALL OF SECTIONS 19, 20, 21, AND 30, T. 2S., R. 8E. OF THE GILA AND SALT RIVER BASE AND MERIDIAN, PINAL COUNTY, ARIZONA.

EXCEPT: THE SOUTH HALF OF THE SOUTHEAST QUARTER AND THE SOUTH HALF OF THE SOUTHWEST QUARTER OF SECTION 20, TOWNSHIP 2 SOUTH, RANGE 8 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, PINAL COUNTY, ARIZONA.

EXCEPT: THE SOUTH HALF OF THE NORTH HALF OF THE SOUTHEAST QUARTER AND THE SOUTH HALF OF THE NORTH HALF OF THE SOUTHWEST QUARTER OF SECTION 20, TOWNSHIP 2 SOUTH, RANGE 8 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, PINAL COUNTY, ARIZONA.

EXCEPT: THAT PORTION OF SECTION 30 IN THE TOWN LIMITS OF QUEEN CREEK AS DESCRIBED AS FOLLOWS:

BEGINNING at the SW corner of Section 30, Township 2 South, Range 8 East of the Gila & Salt River Base & Meridian, Pinal County, Arizona; thence East along the south line of said Section 30 to the south  $\frac{1}{4}$  corner of said Section 30, also being the SE corner of GLO Lot No. 12, a distance of 3,308.58 feet more or less; thence North along the north/south mid-section line of said Section 30, also being the east line of GLO Lot No. 12, a distance of 1,320 feet more or less to the SE corner of the NE  $\frac{1}{4}$  of the SW  $\frac{1}{4}$  of said Section 30, also being the NE corner of GLO Lot No. 12; thence West along the south line of the NE  $\frac{1}{4}$  of the SW  $\frac{1}{4}$  of said Section 30, also being the north line of GLO Lot No. 12, to the SW  $\frac{1}{4}$  corner of the NE  $\frac{1}{4}$  of the SW  $\frac{1}{4}$  of said Section 30, also being the NW corner of GLO Lot No. 12 a distance of 1,320 feet more or less; thence North along the west line of the NE  $\frac{1}{4}$  of the SW  $\frac{1}{4}$  and the west line of the SE  $\frac{1}{4}$  of the NW  $\frac{1}{4}$  of said Section 30, also being the east line of GLO Lot Nos. 8 and 5, a distance of 2,640 feet more or less to the SW corner of the NE  $\frac{1}{4}$  of the NW  $\frac{1}{4}$  of said Section 30, also being the NE corner of GLO Lot No. 5; thence West along the south line of the N  $\frac{1}{2}$  of the N  $\frac{1}{2}$  of said Section 30 a distance of 2,009.70 feet more or less to the west line of said Section 30, also being the NW corner of GLO Lot No. 4; thence South along the west line of said section 30, a distance of 3,960 feet to THE POINT OF BEGINNING.



Janet Napolitano  
Governor

# ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY

1110 West Washington Street • Phoenix, Arizona 85007  
(602) 771-2300 • [www.adeq.state.az.us](http://www.adeq.state.az.us)



Stephen A. Owens  
Director

**RECEIVED**

MAY 11 2004

May 6, 2004

Brian Tompsett, P.E.  
Executive Vice-President  
Johnson Utilities Company, L.L.C.  
5230 E. Shea Blvd.  
Scottsdale, AZ 85254

**U.S. CORPORATION COMMISSION  
DIRECTOR OF UTILITIES**

Dear Mr. Tompsett:

Thank you for your letter of May 5<sup>th</sup>, confirming Johnson Utilities' willingness to assist the Department resolve an intolerable operation and odor problem at the Links Wastewater Treatment facility in northern Pinal County, operated by AUSS.

To confirm our understanding, Johnson Utilities will accept wastewater and effluent from the AUSS service area, on a temporary basis, to eliminate the existing problems in that area, specifically at the Links Wastewater Treatment Plant, the Meadow Vista Wastewater Treatment Plant, and the Cambria Lift Station. The Department agrees that this addition of flow to the Johnson Utilities' system will not result in a deduction from the "paper approval" of subdivisions within the Johnson Utilities' service area. We understand this temporary service agreement between Johnson Utilities and AUSS applies only to those areas within AUSS' existing Certificate of Convenience and Necessity (CC&N) approved areas, including that portion of Section 20 (Links and Cambria), and Sections 21 and 22, Township 2 South, Range 8 East. The temporary service agreement does not apply to any potential expansion of the AUSS service area.

The Department agrees that Johnson Utilities will not be held responsible for any violations of environmental regulations which have occurred or are now occurring within the AUSS service area, and are not responsible for the odor and operational problems at the Links WWTP, the Meadow Vista WWTP or the Cambria Lift Station, or any other facility owned and operated by AUSS.

Again, let me extend our appreciation for the assistance Johnson Utilities is providing to alleviate this very problematic situation.

Sincerely,

Karen L. Smith  
Director, Water Quality Division

C: James Fisher, ACC  
Michele Robertson, ADEQ  
Michael Traubert, ADEQ

Northern Regional Office  
1515 East Cedar Avenue • Suite F • Flagstaff, AZ 86004  
(928) 779-0313

Southern Regional Office  
400 West Congress Street • Suite 433 • Tucson, AZ 85701  
(520) 628-6733



**BULK WASTEWATER TREATMENT  
AND EFFLUENT DISPOSAL AGREEMENT**

**BETWEEN**

**ARIZONA UTILITY SUPPLY & SERVICES, LLC**

**AND**

**JOHNSON UTILITIES, L.L.C.  
dba JOHNSON UTILITIES COMPANY**

**June 11, 2004**

*[Handwritten initials]*

This BULK WASTEWATER TREATMENT AND EFFLUENT DISPOSAL AGREEMENT ("Agreement") dated this 11th day of June, 2004, is between Arizona Utility Supply & Services, L.L.C. ("AUSS"), an Arizona limited liability company, and Johnson Utilities, L.L.C. dba Johnson Utilities Company, an Arizona limited liability company ("JUC"), and pertains to bulk wastewater treatment and effluent disposal services provided by JUC.

## RECITALS

A. AUSS holds a Certificate of Convenience and Necessity ("CC&N") issued by the Arizona Corporation Commission ("Commission") and authorizing the provision of wastewater utility services in certain portions of Pinal County, Arizona as shown in Exhibit A. AUSS is unable to treat all of the wastewater flows generated within portions of its CC&N and to dispose of all effluent generated from wastewater treatment services provided within its CC&N.

B. JUC also holds a CC&N issued by the Commission and authorizing the provision of wastewater utility services in certain portions of Pinal County, Arizona. JUC owns wastewater treatment plants, including a plant known as the Pecan Water Reclamation Plant ("Pecan WRP"), which plant is located in the vicinity of AUSS's CC&N as shown on Exhibit A. The Pecan WRP has been approved by the Central Arizona Association of Governments ("CAAG") under the CAAG Clean Water Act § 208 Plan and has an Aquifer Protection Permit ("APP") approved by Arizona Dept. of Environmental Quality ("ADEQ"). JUC is willing to provide limited bulk wastewater treatment service to AUSS and will, upon execution of this Agreement, take steps to promptly initiate such service to AUSS in Section 22 of AUSS's CC&N as shown on Exhibit A. JUC is also willing to temporarily receive and dispose of effluent generated from the treatment of wastewater within AUSS's CC&N. Both services, the bulk treatment of wastewater and the disposal of effluent, will be provided by JUC to AUSS on an interim basis under the terms and conditions of this Agreement.

C. AUSS has already filed an application with the Commission seeking deletion of Section 22 as shown on Exhibit A from its CC&N and transfer of said property into JUC's CC&N. Now, however, AUSS desires to transfer all of its CC&N to JUC and JUC is willing to accept a transfer of the entirety of AUSS's CC&N, if such transfer is approved by the Commission, and to accept the conveyance of any and all facilities currently being used by AUSS and necessary for JUC to provide safe and reliable wastewater utility service in the area currently covered by AUSS' CC&N. Accordingly, AUSS will, upon execution of this Agreement, promptly take steps to request transfer of its entire CC&N to JUC and, upon approval to transfer all or part of the CC&N, will take steps to convey all necessary utility facilities to JUC in accordance with the terms and conditions set forth in this Agreement.

NOW, THEREFORE, the parties have entered into this Agreement for and consideration of the mutual covenants, warranties, and representations and agree as follows:

*[Handwritten signature]*  
W

## AGREEMENTS

1. Incorporation of Recitals. By this reference, the parties hereby agree to incorporate the recitals above as part of the terms and conditions of this Agreement as if fully set forth herein.

2. Bulk Treatment of Wastewater. AUSS acknowledges and agrees that it lacks adequate wastewater treatment capacity to treat wastewater flows from all customers in its CC&N. JUC represents and warrants that it has excess wastewater treatment capacity in the portion of its CC&N that is adjacent to and in the vicinity of AUSS's CC&N and JUC agrees, on an interim basis, to accept wastewater flows from and to treat the wastewater generated within Section 22 of AUSS's CC&N as shown on Exhibit A attached hereto and incorporated herein by this reference. AUSS will take all necessary steps to ensure that wastewater flows delivered to JUC under this Agreement originate in Section 22 and that no wastewater from other portions of AUSS's CC&N are delivered to JUC for treatment until such time as the Commission approves the transfer of AUSS's CC&N to JUC. JUC will treat such flows at its Pecan WRP, or at any other wastewater treatment facility it may designate, provided however, that AUSS will not be responsible for construction of additional facilities necessary to deliver flows from AUSS's CC&N to a treatment facility other than the Pecan WRP.

3. Bulk Treatment and/or Disposal of Effluent. "Effluent" refers generally to the water reclaimed from the treatment of wastewater. AUSS acknowledges and agrees that it lacks capacity to treat and/or dispose of effluent generated by its treatment of wastewater from all customers in its certificated service area. JUC represents and warrants that it has excess capacity to treat and/or dispose of such effluent and JUC agrees to accept effluent generated from wastewater treatment by AUSS in its CC&N and to treat and/or dispose of such effluent in a manner of its choosing so long as such treatment and/or disposal is in compliance with all applicable law and regulation. AUSS further agrees that, after the first 30 days after execution of this Agreement, all effluent thereafter delivered to JUC under this Agreement shall be of a quality equal to the discharge requirements for effluent set forth in the Aquifer Protection Permit for AUSS's Links Water Reclamation Plant. Upon request of JUC, AUSS shall furnish evidence of testing to show that such effluent meets the discharge quality standard agreed to herein. After the first 30 days after execution of this Agreement, JUC may, in JUC's sole discretion, but JUC shall have no obligation to, accept effluent of a lower quality than required by this Agreement.

4. Fees for Wastewater Treatment and Effluent Disposal Services; Security Deposit; Billing and Collection.

a. Fee for Wastewater Treatment Services. Wastewater flows to JUC's wastewater transmission and treatment system will be metered by flow meters installed by and paid for by AUSS at a point to be designated by JUC. Both AUSS and JUC shall read the flow meters on a monthly basis to determine the amount of wastewater

*[Handwritten signature]*

transmitted to JUC by AUSS for treatment and disposal. JUC will charge AUSS a bulk treatment and disposal services fee equal to \$30.00 for each residential dwelling generating wastewater for treatment by JUC under this Agreement.

b. Fee for Effluent Disposal Services. Effluent deliveries to JUC's wastewater transmission and treatment system will be metered by flow meters installed by and paid for by AUSS at a point to be designated by JUC. Both AUSS and JUC shall read the flow meters on a monthly basis to determine the amount of effluent delivered to JUC by AUSS for additional treatment and disposal. JUC will charge AUSS a bulk effluent disposal fee equal to \$3.53 per 1000 gallons of effluent treated and/or disposed of by JUC under this Agreement.

c. Security Deposit. JUC acknowledges receipt of Twenty-Five Thousand Dollars (\$25,000) from AUSS, which amount is intended to represent twice the estimated monthly cost of wastewater treatment and effluent disposal services provided by JUC under this Agreement. This amount shall be held by JUC as a security deposit during the period this Agreement remains in effect and then returned to AUSS upon its termination unless applied at such time to outstanding amounts owed to JUC by AUSS under this Agreement. The parties further agree that the amount of the security deposit will be reviewed after 90 days and adjusted upward if it is determined that the average monthly cost of bulk wastewater treatment and effluent disposal services during the first 90 days the Agreement exceeds \$12,500, at which time AUSS shall promptly increase the security deposit to an amount that equals twice the average monthly cost of the services being provided by JUC hereunder during the first 90 days the Agreement is in effect.

d. Assignment of Accounts Receivable. In order to secure payment of the bulk treatment and effluent disposal services fees to JUC, AUSS herein assigns to JUC AUSS's accounts receivable, including, without limitation, monthly billings from customers in AUSS's CC&N, and agrees to take all additional steps required by JUC to perfect such assignment.

e. Optional Remedy for Non-Payment by AUSS. In the event of default by AUSS of any of the payment obligations of this Agreement, JUC shall have the right to provide billing and collection services for AUSS and for all AUSS customers. AUSS shall pay JUC \$2.00 per customer billed by JUC. Such billing and collection service shall be undertaken by JUC as agent for AUSS and in the same or materially similar manner as JUC currently bills its own customers, except that bills sent to AUSS's customers shall be in accordance with AUSS's Commission-approved tariff and in a format that as closely as possible matches the billing format currently used by AUSS. JUC shall provide AUSS with a monthly remittance equal to the total amount collected from all AUSS customers by JUC less the total combined monthly cost of services provided by JUC to AUSS hereunder plus billing and collection services provided by JUC to AUSS under this Agreement. JUC shall provide AUSS a detailed invoice of such charges each month at the time JUC remits collections from AUSS customers to AUSS. JUC shall remit to AUSS the collections of monies collected for AUSS less said cost at the time of the next billing cycle on a monthly basis. JUC shall also provide AUSS a

18-201  
LW  
0

monthly customer account status report. AUSS shall be solely responsible for collection of any delinquent amounts from its customers.

f. Monthly Reporting. On or before the fifth of each month this Agreement remains in effect, AUSS shall provide a reconciliation report to the Commission's Utilities Division Staff. This reconciliation report shall state: (1) the number of gallons of wastewater delivered by AUSS to JUC for bulk treatment under this Agreement in the preceding month; (2) the number of gallons of effluent delivered by AUSS to JUC for treatment and/or disposal under this Agreement in the preceding month; (3) whether the effluent delivered to JUC under this Agreement in the preceding month was of a quality equal to the discharge requirements for effluent set forth in the Aquifer Protection Permit for AUSS's Links Water Reclamation Plant; 4) the amount paid to JUC by AUSS in the preceding month for services provided under this Agreement; and (5) whether AUSS is current on all of its payment obligations under this Agreement.

5. Termination of Bulk Wastewater Treatment and Effluent Disposal Services.

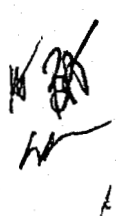
a. Termination of Bulk Wastewater Treatment Services. The provision of bulk wastewater treatment services under this Agreement shall terminate the earlier of 1) 180 days following execution of the Agreement, at which time JUC's obligation to accept and treat wastewater flows from Section 22 of AUSS's CC&N under this Agreement shall terminate without further action by the parties; or 2) an order of the Commission extending JUC's CC&N to include any portions of AUSS's CC&N, at which time JUC shall charge customers receiving wastewater treatment services from JUC in accordance with its own Commission-approved tariffs of rates and charges.

b. Termination of Effluent Disposal Services. JUC shall provide effluent disposal services to AUSS for a period of 30 days after execution of this Agreement. Thereafter, JUC shall have the right to terminate provision of effluent disposal services at anytime after this Agreement is executed upon 10 days written notice to AUSS if such effluent disposal services materially interfere with the proper operation of the Pecan WRP.

6. Regulatory Compliance and Approvals.

a. Pecan WRP. JUC shall be responsible for all permits and approvals associated with the construction and operation of the Pecan WRP and represents and warrants that it will make reasonable efforts to maintain such compliance with all applicable laws and regulations during the time this Agreement is in effect. AUSS agrees to cooperate as requested by JUC to provide information related to the generation of wastewater flows within its CC&N and AUSS's facilities and operations.

b. CAAG 208 Approval. The Pecan WRP is authorized under the current CAAG 208 Plan, as amended.



c. Commission Approval. The parties believe that specific Commission approval of this Agreement is not required. In the event Commission approval is required or sought by either party, the parties agree to cooperate fully in any proceedings before the Commission or any other agency or tribunal.

7. Transfer of CC&N; Transfer of Facilities.

a. Transfer of AUSS's CC&N. AUSS acknowledges that JUC's willingness to enter into this Agreement is expressly contingent on and in consideration for AUSS's intention to seek Commission approval to transfer all of its CC&N to JUC. AUSS has filed an application seeking deletion of Section 22 from its CC&N and transfer of that section into JUC's CC&N. AUSS agrees to promptly take steps to seek approval of the Commission to delete and transfer the entirety of AUSS's CC&N to JUC and, following such modification, to diligently prosecute said application. JUC agrees to provide cooperation in such proceeding as necessary to effectuate the transfer of AUSS's CC&N to JUC.

b. Conveyance of Facilities. Upon approval of the ACC to transfer all or part of AUSS's CC&N to JUC, AUSS will execute a bill of sale and/or other necessary documentation to convey title to all facilities necessary for JUC to provide permanent wastewater utility services within the portions of AUSS's CC&N transferred to JUC by the ACC. Such conveyance shall be at no cost to JUC, provided, however, that at the time of conveyance, JUC will accept an assignment of any obligation of AUSS to pay refunds to developers associated with such facilities. At the time of the conveyance, AUSS shall also provide documentation evidencing that all facilities being conveyed are (1) free and clear of all liens and encumbrances; (2) subject to all necessary governmental approvals and (3) located in public utility easements or other rights-of-way. AUSS shall take steps to ensure that all rights held by AUSS in such easements and/or rights-of-way are transferred to JUC along with any regulatory approvals and permits. AUSS acknowledges and agrees that JUC shall have no obligation to accept a transfer of all or portions of its CC&N, and to initiate permanent wastewater utility services in such areas, until the steps required in this paragraph are completed to JUC's reasonable satisfaction.

8. Indemnity and Hold Harmless Agreement. AUSS shall indemnify and hold JUC harmless from, and defend JUC against (by legal counsel chosen by JUC) all claims, actions, causes of action, assertions, liabilities, losses, damages, costs and expenses, including reasonable attorneys' fees, of any kind or nature brought by a third party, including any property owner of other customer in AUSS's CC&N or regulatory agency asserting jurisdiction, arising out of or related to AUSS's failure to perform its obligations under this Agreement.

9. Notice. All notices and other written communications required hereunder shall be sent to the parties as follows:

11



Johnson Utilities Company  
Attn: George Johnson  
5230 East Shea Blvd.  
Scottsdale, AZ 85254

Arizona Utility Supply & Services, LLC  
Attn: Maurice Lee  
P.O. Box 30543  
Phoenix, AZ 85046-0543

Each party shall advise the other party in writing of any change in the manner in which notice is to be provided hereunder.

10. Default. Any claim that AUSS or JUC is in default or breach of this Agreement shall be in writing and sent via certified-return receipt United States mail to the address provided in paragraph 7 above. No default shall become effective until ten (10) days from the date of mailing, during which time the party claimed to be in default shall have an opportunity to cure the alleged default.

11. Good Standing; Authority to Execute. AUSS, and its representatives signing hereinbelow, represent and warrant to JUC, that AUSS is duly formed and validly existing under the laws of Arizona and that the individuals executing this Agreement on behalf of AUSS are authorized and empowered to bind AUSS.

12. Attorneys' Fees. The prevailing party in any litigation or other proceeding concerning or related to this Agreement, or the enforcement of thereof, shall be entitled to recover its costs and reasonable attorneys' fees.

13. Time of the Essence. Time is of the essence of every provision hereof.

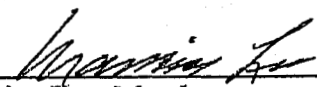
14. Miscellaneous. This Agreement shall be governed by the laws of the State of Arizona. This Agreement, and each and every term and condition contained herein, shall be binding upon and inure to the benefit of the successors and assigns of AUSS and JUC. This Agreement sets forth the entire agreement between the parties and supersedes all prior negotiations, understandings and agreements between them with respect to the provision of bulk wastewater treatment services and/or effluent disposal services, except as otherwise expressly provided herein. The Line Extension Agreement dated November 15, 2002 by and between JUC, AUSS and the developers of the Castlegate subdivision located in Section 22 of AUSS's CC&N is not amended or superseded in any manner by this Agreement, nor do JUC or AUSS waive or release any claims they may have regarding that agreement. No change in, addition to, or waiver of any provisions of this Agreement shall be binding upon either party unless in writing and signed by both parties. The remedies provided in this agreement shall not be deemed exclusive remedies but shall be in addition to all other remedies available at law or in equity. No waiver by either party of any breach of this agreement nor any failure by either party to insist on strict performance by the other party of any provision of this agreement shall in any way be

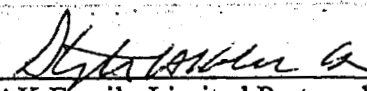
*[Handwritten signature]*

construed to be a waiver of any future or subsequent breach by such defaulting party or bar the non-defaulting party's right to insist on strict performance by the defaulting party of the provisions of this agreement in the future.

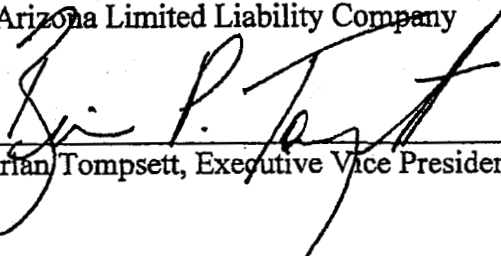
IN WITNESS WHEREOF, the parties hereto executed this Agreement as of the date first above written.

ARIZONA UTILITY SUPPLY & SERVICES, L.L.C.,  
An Arizona Limited Liability Company

By   
Maurice Lee, Member

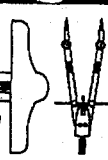
By   
SAK Family Limited Partnership, Member

JOHNSON UTILITIES, L.L. C.,  
An Arizona Limited Liability Company

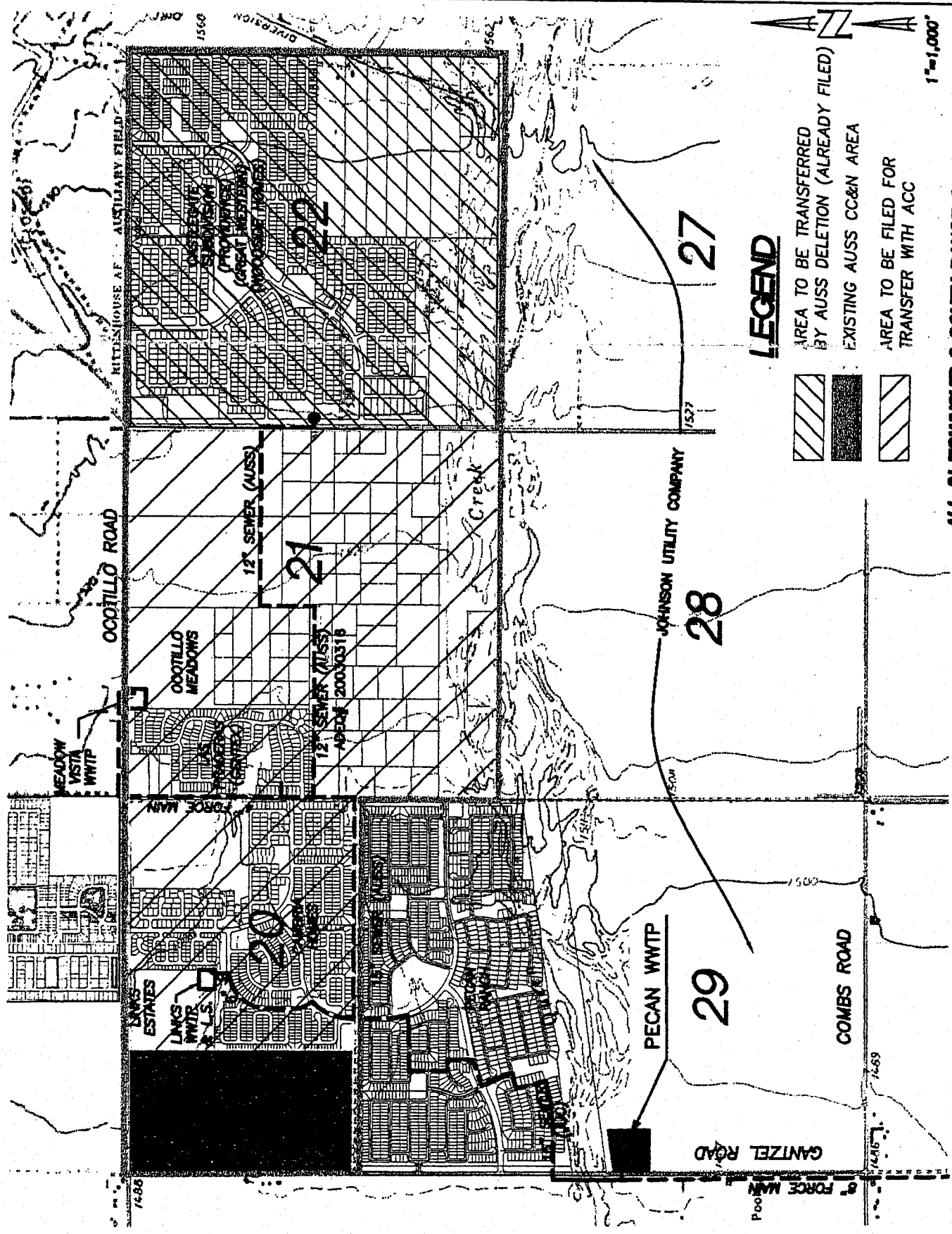
By   
Brian Pompsett, Executive Vice President

1555087.1








# EXHIBIT A



## LEGEND

-  AREA TO BE TRANSFERRED BY AUSS DELETION (ALREADY FILED)
-  EXISTING AUSS CC&N AREA
-  AREA TO BE FILED FOR TRANSFER WITH ACC

1"=1,000'

**ALL IN TOWNSHIP 2 SOUTH RANGE 8 EAST, GASFRAM**

**COMMISSIONERS**  
MARC SPITZER - Chairman  
WILLIAM A. MUNDELL  
JEFF HATCH-MILLER  
MIKE GLEASON  
KRISTIN K. MAYES



BRIAN C. MCNEIL  
Executive Secretary

ARIZONA CORPORATION COMMISSION

June 24, 2004

Mr. George Johnson  
President  
Johnson Utilities Company, LLC  
5230 East Shea Boulevard  
Phoenix, Arizona 85253

Re: Emergency service to Arizona Utility Supply and Service, LLC ("AUSS")

Dear Mr. Johnson,

Thank you for your commitment to the public interest in acting to resolve AUSS's inability to treat and dispose of its wastewater. Your quick action, in cooperation with the Arizona Department of Environmental Quality (ADEQ) and Utilities Division Staff ("Staff") averted AUSS' effluent ponds from overflowing and creating environmental damage.

Staff is fully supportive of Johnson Utilities Company's ("JUC") actions to take wastewater and effluent flows from AUSS on an emergency interim basis prior to the Commission's consideration of the pending application to transfer Section 22 from AUSS to JUC. Staff has reviewed the emergency service agreement and believes the agreement protects the public by providing the appropriate interim solution to ensure wastewater flows are treated and service providers are compensated. Staff will file the JUC emergency service agreement with AUSS, ADEQ's May 6, 2004 letter of support and this letter in the transfer docket to update the record.

Staff understands that compliance, finance and other issues remain outstanding with regard to full resolution of any subsequent JUC-AUSS transaction, and you will file an application subsequent to resolution on those issues.

Again, thank you for your proactive stance and cooperation in the temporary resolution of this problem.

Sincerely,

A handwritten signature in black ink, appearing to read "E. Johnson", with a long horizontal flourish extending to the right.

Ernest Johnson  
Director  
Utilities Division

LAW OFFICES  
**FENNEMORE CRAIG**  
A PROFESSIONAL CORPORATION

JAY L. SHAPIRO  
Direct Phone: (602) 916-5366  
Direct Fax: (602) 916-5566  
jshapiro@fclaw.com

**RECEIVED**

JUN 25 2004

ARIZONA CORPORATION COMMISSION  
DIRECTOR OF UTILITIES  
June 24, 2004

OFFICES IN:  
PHOENIX, TUCSON,  
NOGALES, AZ; LINCOLN, NE  
3003 NORTH CENTRAL AVENUE  
SUITE 2600  
PHOENIX, ARIZONA 85012-2913  
PHONE: (602) 916-5000  
FAX: (602) 916-5999

**VIA FACSIMILE AND US MAIL**

Jim Fisher  
Executive Consultant  
Utilities Division  
Arizona Corporation Commission  
1200 W. Washington  
Phoenix, AZ 85007

Re: Johnson Utilities, L.L.C. – Initiation of Wastewater Utility Service in  
Certificated Service Area of AUSS by Johnson Utilities

Dear Mr. Fisher:

As you know, Arizona Utility Supply & Services ("AUSS") recently filed a second application concerning the relinquishment of its CC&N. I will not take up your valuable time by going through all of the pertinent background on the "AUSS matter" as you are already quite familiar with the facts. However, I did want to provide some clarification concerning Johnson Utilities' views and intentions with respect to its initiation of wastewater utility service in the AUSS CC&N.

By way of clarification, Johnson Utilities does not intend to acquire any ownership interest in AUSS for a variety of reasons, including the fact that my client is not willing to assume or otherwise subject itself to any liability of AUSS. Moreover, while Johnson Utilities remains willing to become the certificated wastewater utility service provider in the area currently covered by AUSS's CC&N, as evidenced by its June 10, 2004 agreement with AUSS, it is Johnson Utilities intention to provide such utility service under the same terms and conditions, i.e., Commission-approved tariff schedules, as wastewater utility service is presently being provided throughout its own certificated service area.

Thus, while both the AUSS applications and the AUSS/Johnson Utilities agreement speak of a "transfer" of AUSS's CC&N to Johnson Utilities, I concur that it makes more sense, as you have already concluded, to avoid a "transfer" of the existing CC&N to Johnson Utilities,

# FENNEMORE CRAIG

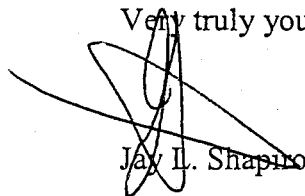
Jim Fischer  
June 24, 2004  
Page 2

which, could imply that Johnson Utilities is simply stepping into AUSS's shoes as the CC&N holder. Instead, as I understand Staff is recommending, Johnson Utilities would support, and in fact would prefer to see the Commission simultaneously approve: (1) the deletion of AUSS's current CC&N; (2) the transfer of AUSS's assets, used and necessary in providing wastewater utility service, to Johnson Utilities pursuant to A.R.S. § 40-285; and (3) the extension of Johnson Utilities' existing CC&N to include the area currently covered by and included in AUSS's CC&N.

I do not believe this approach constitutes a material modification of the existing applications. In fact, I think it is fair to say that, but for the choice of terminology in the applications and agreement, this is what the parties have contemplated all along. For example, we understand that ADEQ is working with AUSS on a closure plan that would effectively take out of service any and all wastewater utility facilities that Johnson Utilities will not need to provide wastewater utility services in AUSS's currently certificated service area. Thus, with the collective support of Staff, AUSS and Johnson Utilities, I am confident that the Commission can issue its order simultaneously accomplishing each of these actions spelled-out above.

Please let me know if you have any comments or questions, or whether any additional materials are needed by Staff to prepare its Staff Report.

Very truly yours,



Jay L. Shapiro

JLS/mlh

cc: Brian Tompsett  
Steve Olea  
Jeff Zimmerman  
Jason Gellman

1559399.1



MEMORANDUM RECEIVED

2004 MAY 17 A 10:10

TO: Docket Control  
Arizona Corporation Commission

AZ CORP COMMISSION  
DOCUMENT CONTROL

FROM: Ernest G. Johnson  
Director  
Utilities Division

Date: May 14, 2004

RE: ARIZONA UTILITY SUPPLY & SERVICES, INC. AMENDED  
APPLICATION FOR TRANSFER OF A PORTION OF ITS CERTIFICATE OF  
CONVENIENCE AND NECESSITY TO JOHNSON UTILITIES L.L.C.  
(DOCKET NO. SW-04002A-02-0837 AND WS-02987A-02-0837)

Attached is the Staff Report for Arizona Utility Supply & Services, Inc. application for the Transfer of a Portion of its Certificate of Convenience and Necessity to Johnson Utilities L.L.C. Staff recommends approval of the transfer of a portion of the Certificate of Convenience and Necessity.

EGJ:JEF:hml

Originator: Jim Fisher

Service List for: Arizona Utility Supply & Services, Inc. and Johnson Utilities, L.L.C.  
Docket Nos. SW-04002A-02-0837 and WS-02987A-02-0837

Mr. Maurice Lee  
Managing Member  
Arizona Utility Supply & Services, Inc.  
4002 E. Taro Lane  
Phoenix, Arizona 85050

Mr. George Johnson  
Johnson Utilities Company  
5230 East Shea Boulevard  
Phoenix, Arizona 85253

Mr. Jay L. Shapiro  
Fennemore Craig  
3003 North Central Ave.  
Suite 2600  
Phoenix, Arizona 85012  
Attorney of Johnson Utilities L.L.C.

Mr. Christopher C. Kempley  
Chief, Legal Division  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007

Mr. Ernest G. Johnson  
Director, Utilities Division  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007

Ms. Lyn Farmer  
Chief, Hearing Division  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007

STAFF REPORT  
UTILITIES DIVISION  
ARIZONA CORPORATION COMMISSION

ARIZONA UTILITY SUPPLY & SERVICES, INC.  
APPLICATION FOR APPROVAL OF THE TRANSFER  
OF A PORTION OF ITS CERTIFICATE OF CONVENIENCE  
AND NECESSITY TO JOHNSON UTILITIES L.L.C.

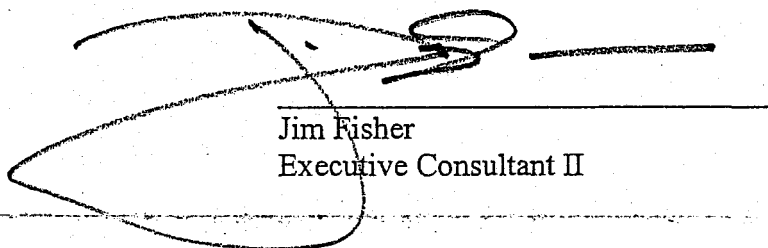
DOCKET NOS.  
SW-04002A-02-0837  
AND  
WS-02987A-02-0837

May 2004

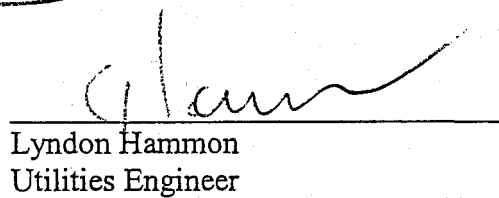
## STAFF ACKNOWLEDGEMENT

The Staff Report for Arizona Utility Supply & Services, L.L.C. (Docket Nos. SW-04002A-02-837 WS-02987A-02-0837) was the responsibility of the Staff members listed below. Jim Fisher was responsible for the review and analyses of the Company's application. Lyndon Hammon was responsible for the engineering and technical analysis.

Contributing Staff:



Jim Fisher  
Executive Consultant II



Lyndon Hammon  
Utilities Engineer

**EXECUTIVE SUMMARY**  
**ARIZONA UTILITY SUPPLY & SERVICES, L.L.C.**  
**DOCKET NOS. SW-04002A-02-837**  
**WS-02987A-02-0837**

On February 22, 2002, Arizona Utility Supply and Service, L.L.C. ("AUSS" or "Company") filed an application with the Arizona Corporation Commission ("ACC" or "Commission") to modify Decision No. 64288 (December 31, 2001). On November 12, 2002, AUSS filed an application with the Commission requesting approval of the transfer of a portion of its Certificate of Convenience and Necessity ("CC&N") to Johnson Utilities Companies ("Johnson"), an authorized water and wastewater provider in portions of Pinal county.

In Decision No. 64288 (December 31, 2001) the Commission authorized AUSS to provide wastewater service to five sections within Pinal County. AUSS has requested the Commission modify its conditions for approval to be consistent with the regional wastewater plan approved in the Central Arizona Association of Governments ("CAAG") 208 Plan. AUSS is also seeking Commission authority to transfer Section 22 of its authorized CC&N to Johnson, as the CAAG 208 Plan has authorized Johnson to serve Section 22.

The Clean Water Act is a commitment by the federal government to the elimination of pollution in the nation's waters. Each state is required, under Section 208 of the Clean Water Act, to develop and implement area-wide water quality management plans for pollution control. CAAG has been designated the area wide water quality management planning agency for the Pinal and Gila County areas.

In conjunction with the requirements of the Clean Water Act, ADEQ issued Johnson an Aquifer Protection Permit ("APP"). On October 23, 2003, ADEQ completed its last Annual Compliance Inspection for Johnson's Wastewater Treatment Plant ("WWTP") to ensure Johnson was operating per the requirements of the APP and Reuse Permit. ADEQ found Johnson in compliance with all requirements.

The CAAG 208 Plan determined that Section 22 will be better served by a larger regional water reclamation plant, Pecan Water Reclamation Plant ("WRP"). AUSS intended that wastewater flows from its service areas would be treated by existing smaller plants, Cambria and Castlegate. AUSS informed ADEQ on June 12, 2003, that the Company and Johnson have entered into an agreement to treat wastewater flows intended for the Castlegate at the regional Pecan WRP.

On December 29, 2003, AUSS requested the Commission provide the Company until December 29, 2004, to obtain 208 Plan conformance as required by Decision No. 64288. AUSS also informed the Commission that the Castlegate and the Cambria wastewater treatment plants are no longer under consideration for construction, and therefore, any compliance issues should be removed.

On November 20, 2003, ADEQ conducted an annual inspection of the Meadow Vista WWTP. ADEQ issued AUSS a Notice of Violation ("NOV") for its failure to operate a

subsurface disposal of effluent. ADEQ found that standing effluent of approximately two (2) feet deep was in the leach field. ADEQ believes that AUSS has directed excess effluent to the leach field and caused standing effluent. ADEQ's November 20, 2003, NOV also found AUSS had not complied with operation and maintenance requirements, nor complied with monitoring and reporting requirements.

Staff recommends that the Commission modify Decision No. 64288 to remove the condition that AUSS file, within 365 days of the effective date of the decision, a copy of the ADEQ Certificate of Approval to Construct the Cambria Plant and the Castlegate Plant.

Staff recommends that the Commission approve AUSS Application to Transfer Section 22 of Township 2 South and Range 8 East to Johnson Utilities Company.

Staff recommends that the Commission Cancel AUSS CC&N for Section 22 of Township 2 South and Range 8 East.

Staff further recommends that the Commission require AUSS to show cause that the Commission should not revoke the CC&N provided in Decision No. 64288.

## TABLE OF CONTENTS

	<u>Page</u>
INTRODUCTION.....	1
BACKGROUND .....	1
AUSS FAILURE TO FILE ACC ANNUAL REPORT .....	2
AUSS - NOTICE OF VIOLATION .....	2
JOHNSON UTILITIES.....	3
JOHNSON'S ADEQ COMPLIANCE STATUS .....	3
JOHNSON'S ACC COMPLIANCE STATUS.....	4
AUSS REQUEST TO MODIFY DECISION NO. 64288 .....	5
CAAG 208 APPROVAL.....	6
ADEQ PERMITS.....	7
PECAN WATER RECLAMATION PLANT .....	8
AUSS PROPOSED TRANSFER TO JOHNSON.....	9
SUMMARY .....	9
RECOMMENDATIONS.....	10

## ATTACHMENTS

ENGINEERING MAP.....	1
----------------------	---



## Introduction

On February 22, 2002, Arizona Utility Supply and Service, L.L.C. ("AUSS" or "Company") filed an application with the Arizona Corporation Commission ("ACC" or "Commission") to modify Decision No. 64288 (December 31, 2001). On February 25, 2002, AUSS requested that the Commission modify Decision No. 64288 to provide the Company two (2) years with which to evidence ownership of property on which wastewater treatment plant assets are located, rather than the sixty (60) days provided by the Commission in the original decision.

On November 12, 2002, AUSS filed an application with the Arizona Corporation Commission ("ACC" or "Commission") requesting approval of the transfer of a portion of its Certificate of Convenience and Necessity ("CC&N") to Johnson Utilities Companies ("Johnson").

On April 16, 2003, AUSS filed a request with the Utilities Division to request an extension of time in which to file its 2002 Annual Report per the requirements of the Arizona Administrative Code ("A.A.C.") R14-2-610.D.4. On May 16, 2003, AUSS filed its revenue statements.

On August 27, 2003, AUSS filed an amended application with the Commission requesting approval of the transfer of a portion of its CC&N to Johnson. On September 26, 2003, Staff informed AUSS that the Amended Application was insufficient for administrative purposes and requested additional information from the applicant. On August 27, 2003, AUSS also filed an application with the Commission requesting approval to extend its CC&N to include two parcels contiguous to the northern boundary of its current CC&N.

On December 29, 2003, AUSS filed an amended request, asking the Commission to provide the Company until December 29, 2004 to obtain 208 Plan conformance as required by Decision No. 64288 (December 31, 2001).

On March 17, 2004, AUSS withdrew its application with the Commission requesting approval to extend its CC&N to include two parcels contiguous to the northern boundary of its current CC&N.

## Background

In Decision No. 64288 (December 31, 2001) the Commission authorized AUSS to provide wastewater service to five sections within Pinal County, specifically Sections 19, 20, 21, 22 and 30 of Township 2 South of Range 8 East.

By this application AUSS is seeking Commission authorization to modify the compliance requirements of Decision No. 64288 and transfer Section 22 of its CC&N to Johnson. The transfer area is generally located one mile north of Combs road, bounded on the east by Schneff Road, and south of Rittenhouse Auxillary Airfield.

AUSS is a Commission authorized wastewater provider and subject to the rules and regulations of the Commission. AUSS is currently providing service to the public.

### **AUSS Failure to File ACC Annual Report**

AUSS is required to file an Annual Report with the Commission by April 15 of each year per the requirements of the Arizona Administrative Code ("A.A.C.") R14-2-610.D.4. To date AUSS has not filed its Annual Report due April 15, 2003. On April 16, 2003, AUSS filed a request with the Utilities Division to request an extension of time in which to file its 2002 Annual Report.

On April 16, 2003, Staff informed AUSS the Annual Report was due April 15 of each year and that any variance of the rule would require an order from the Commission. Staff further informed AUSS of the need to file the report and the related statements of revenue by May 1, 2003. AUSS was informed that statements of revenue are required by Arizona law to enable Staff to calculate the regulatory assessment.

On May 16, 2003, AUSS filed its revenue statements informing the Commission that the Company had obtained \$452,411 for the year ending December 31, 2002.

As of April 14, 2004, AUSS has not filed the required Annual Report or requested any variance from A.A.C. R14.-2-610.D.4.

### **AUSS - Notice of Violation**

On September 17, 2002, the Arizona Department of Environmental Quality ("ADEQ") issued AUSS a Notice of Violation ("NOV") based on a site inspection of the Links Estates Wastewater Treatment Plant ("Links WWTP"). On September 16, 2003, ADEQ informed AUSS that most of the items of the NOV had been resolved, except for the transfer of the Aquifer Protection Permit ("APP") to AUSS.

On November 13, 2003, ADEQ issued AUSS another NOV for the unauthorized discharge of effluent to a common area of the Links WWTP. ADEQ had received a complaint of odor and conducted an inspection. On January 27, 2004, ADEQ informed AUSS that the NOV was closed as the Company had complied with ADEQ's requirements.

Subsequently, AUSS directed additional sewage flows to the Links WWTP. As a result the Links WWTP was unable to properly treat the sewage, resulting in what ADEQ has termed an "intolerable situation." On May 6, 2004, ADEQ confirmed an agreement with Johnson Utilities to assist ADEQ in resolving the problems with the AUSS system. Johnson Utilities agreed to accept wastewater and effluent from the AUSS service territory, and according to ADEQ will not be responsible for the odor, operational, or any violations occurring in the AUSS territory. As of May 14, 2004, Johnson Utilities was treating the wastewater and effluent of AUSS without compensation.

The Meadow Vista WWTP is owned and operated by AUSS to serve a portion of the CC&N. AUSS purchased the plant but failed to report to ADEQ in violation of the Arizona Administrative Code. On November 20, 2003, ADEQ conducted an annual inspection of the Meadow Vista WWTP and issued AUSS a NOV for failure to report a change in ownership. ADEQ's also found AUSS had not complied with operation and maintenance requirements, nor had it complied with monitoring and reporting requirements.

On November 20, 2003, ADEQ issued AUSS a NOV for its failure to operate a subsurface disposal of effluent. According to ADEQ, excess effluent from the Links WWTP (discussed above) was transported to the Meadow Vista WWTP for process. In addition, ADEQ previously issued AUSS a temporary permit to "vault and haul" sewage from the Castlegate subdivision, to the Meadows WWTP for treatment. ADEQ found that standing effluent of approximately two (2) feet deep was in the leach field and was caused by AUSS directing excess effluent to the leach field and caused standing effluent.

The ADEQ NOV has not been resolved by AUSS.

### **Johnson Utilities**

Johnson is a public service corporation providing water and wastewater service to a portion of the state of Arizona. The Commission provided Johnson with its original CC&N in Decision No. 60223 (May 27, 1997), and subsequently extended the CC&Ns in Decision Nos. 61069 (August 7, 1998) 62087 (November 19, 1999), 63960 (September 4, 2001) and 64062 (October 4, 2001).

The Commission has also denied previous Johnson requests to extend its CC&N, particularly Decision No. 64288 (December 28, 2001) which authorized AUSS the territory subject to this application.

According to Johnson's most recent Annual Report filing with the Commission's Utilities Division, Johnson has installed approximately \$45.8 million in water and wastewater plant to serve the current and future customers in the service area. Johnson reports a combined water and wastewater revenue of \$5.23 million, and reports a combined long term debt of less than \$1 million.

### **Johnson's ADEQ Compliance Status**

As fully explained below, wastewater treatment plants are regulated under a federal, state, and regional system to ensure the proper technology is deployed to meet the current and future needs of the community. Any owner and operator of a WWTP must obtain regional, state and federal approval of the WWTP and its operations, as part of the Clean Water Act.

In conjunction with the requirements of the Clean Water Act, the ADEQ issued Johnson Aquifer Protection Permit ("APP") No. P103081 and Reuse Permit No. R103081 as part of the

environmental permitting required for Johnson's Section 11 Wastewater Treatment Plant. On October 23, 2003, ADEQ completed its most recent Annual Compliance Inspection for Johnson's WWTP to ensure Johnson was operating per the requirements of the APP and Reuse Permit.

According to the ADEQ, 3,689 homes are connected to the sewer system. The WWTP was operating adequately and peak flows have exceeded 450,000 gallons per day ("GPD"). The facility has a design capacity of 1.6 million GPD, and CC&N is anticipated to eventually produce 2.4 million GPD.

The APP was amended June 12, 2002 and required construction of a new compliance monitoring well. Johnson has constructed the required compliance well and submitted the required data to ADEQ. ADEQ noted deficiencies from an October 6, 2003 file review were satisfied by Johnson in the October 23, 2003 inspection.

ADEQ reported that Johnson holds a Reuse Permit which allows the utility to discharge treated effluent, however, Johnson has not discharged to the reuse area, due to the use of the recharge basins.

The Compliance Summary of ADEQ for Johnson shows that the Monitoring and Reporting Requirements, the Reuse Permit, the Operator Certification Requirements, and Operation & Maintenance Requirements are in compliance.

#### **Johnson's ACC Compliance Status**

In Decision No. 60233, Johnson was required to comply with eight separate conditions. According to the Utilities Division Compliance Section, Johnson complied with all of the conditions.

In Decision No. 62087, Johnson was required to comply with three separate conditions. According to the Utilities Division Compliance Section, Johnson complied with all of the conditions.

In Decision No. 62284, Johnson was required to demonstrate compliance with ADEQ. According to the Utilities Division Compliance Section, Johnson demonstrated ADEQ compliance on August 25, 2000.

In Decision No. 64062, Johnson was required to comply with seven separate conditions. According to the Utilities Division Compliance Section, Johnson complied with all of the conditions.

In Decision No. 65480 (April 22, 2003) the Commission found that Johnson had failed to comply with ADEQ requirements and failed to timely inform the Commission of its ADEQ status as required. The Commission recognized Johnson's ADEQ civil penalty of \$80,000, and Consent Agreement as resolution of the compliance issues. The Commission further required

Johnson to file documentation demonstrating ADEQ compliance or any ADEQ violation. In addition the Commission required Staff to conduct an investigation into Johnson and recommend whether an Order to Show Cause against Johnson was warranted.

Johnson has consistently demonstrated that it is providing water and wastewater service to the public in accordance with the rules and regulations of the Commission, and in compliance with ADEQ.

#### **AUSS Request to Modify Decision No. 64288**

In Decision No. 64288 (December 31, 2001) the Commission authorized AUSS to provide wastewater service to a portion of Pinal County, subject to compliance with eight (8) conditions, AUSS has complied with three of the conditions and shown good reason why certain conditions are no longer needed in light of the changed circumstances related to the CAAG 208 regional planning for wastewater treatment.

The 8 conditions imposed on AUSS in Decision No. 64288 were:

1. That AUSS file a tariff of the authorized rates. (Complied)
2. That AUSS refund unauthorized hook-up fees of approximately \$185,000. (Complied)
3. That AUSS file, within 365 days of the effective date of the decision, a copy of its Pinal County franchise. (Complied)
4. That AUSS file, within 365 days of the effective date of the decision a copy of its approved EPA 208 Plan and ADEQ APP. (Non-compliance)
5. That AUSS file, within 365 days of the effective date of the decision a copy of the ADEQ Certificate of Approval to Construct the Cambria Plant. (Requirement is Moot based on AUSS use of Pecan WTP)
6. That AUSS file, within 2 years of the effective date of the decision a copy of the ADEQ Certificate of Approval to Construct the Castlegate Plant. (Requirement is Moot based on AUSS use of Pecan WTP and Commission transfer of Section 22)
7. That AUSS file, within 5 years of the effective date of the decision a copy of the ADEQ Certificate of Approval to Construct the regional treatment plants. (Requirement should be revised to reflect Pecan WTP)
8. That AUSS file documentation that it has acquired the Links wastewater plant, and the Cambria wastewater plant within sixty days of the decision in this matter, in the event such documentation was not provided in a timely manner,

the Certificate of Convenience and Necessity shall be rendered null and void without further order by the Commission. (Non-compliance)

On February 22, 2002, AUSS filed a status report on compliance with the Commission's Order. AUSS timely filed the tariff rates as required in Finding of Fact No. 78. (Condition 1). Utilities Division Staff found it in compliance with ACC requirements. AUSS also provided a copy of a check in the amount of \$183,467 demonstrating a full refund of the unauthorized Hook-up charges as required by Finding of Fact No. 82. (Condition 2). In addition the Company filed with copies of its Pinal County franchise as required. (Condition 3).

The February 22, 2002 AUSS compliance filing also included the Company's request for a 90 day extension of time to complete negotiations for the transfer of certain wastewater treatment assets to AUSS to comply with Decision No. 64288. (Condition 8)

On February 25, 2002, the Company modified its requested extension of time to comply with evidencing ownership of the utility assets. AUSS requested that the Commission modify Decision No. 64288 to provide the Company two (2) years with which to evidence ownership of property on which the Links assets are located, rather than the sixty (60) days provided by the Commission.

To support the request for an extension of time AUSS provided copies of a February 21, 2002 Bill of Sale for the Links system, however, the treatment facility is located on leased property. Pursuant to the agreement with the Ocotillo Homeowners Association, the Company obtained two years with which to relocate the facilities from the leased property.

On December 29, 2003, AUSS requested the Commission provide the Company until December 29, 2004 to obtain 208 Plan conformance as required by Decision No. 64288. AUSS also informed the Commission that the Castlegate and the Cambria wastewater treatment plants are no longer under consideration for construction and therefore any compliance issues should be removed.

### **CAAG 208 Approval**

The Water Quality Act of 1987 ("Clean Water Act") is a commitment by the federal government towards the elimination of pollution in the nation's waters. Each state is required, under Section 208 of the Clean Water Act, to develop and implement area-wide water quality management plans for pollution control.

In Arizona, 6 Councils of Government, ("COGs") have been designated by the Governor as "Water Quality Management Planning Agencies" under Section 208 of the Clean Water Act. The Central Arizona Association of Governments ("CAAG") has been designated the area wide water quality management planning agency for the Pinal and Gila County areas. Therefore, AUSS and Johnson are required to offer wastewater service consistent with the CAAG 208 Plan.

The guidelines for 208 planning set forth in the Clean Water Act are fairly broad so that the various water quality issues in different areas of the nation can be addressed appropriately. Each 208 Plan must identify the water quality management needs in its planning area and provide a program to develop solutions. The CAAG 208 planning process is an ongoing effort in response to changing water resource issues, regulations, treatment technologies and changing demographics.

## ADEQ Permits

A major effort of the CAAG 208 Plan is the Point Source Plan. Point Source planning is primarily directed at compiling the preferred wastewater collection and treatment system for the Pinal county area through the year 2020. Toward that end, the Point Source Plan examines population and wastewater flow projections, treatment methods, effluent disposal, reclaimed water reuse and sludge management.

ADEQ defines, monitors and enforces water quality standards for protected uses of surface waters, aquifers and public water supplies. The ADEQ permit framework for point source management consists of three primary elements consisting of Arizona Pollutant Discharge Elimination System ("AZPDES") the APP and the reclaimed water reuse permit program. The purpose of the AZPDES permit programs is to regulate the quality of point source discharges into the waters of the nation. Based on specific criteria, discharges to rivers, dry washes and various lakes and canals within the affected area are subject to the AZPDES permit program provisions.

The APP was established by the Environmental Quality Act of 1986 and implemented by rule in 1989. The purpose of the APP program is to protect the groundwater quality and public health from potential environmental risks posed by the facilities that discharge pollutants to the land surface, underlying soil, or groundwater that have a potential to reach an aquifer.

The APP permitting requirements are determined based on the type of facility or land use, capacity of the facility, and/or the type of discharges that the facility will produce. The most crucial requirements for obtaining an APP are demonstrating that the Best Available Demonstrated Control Technology ("BADCT") will be used to minimize the discharge of pollutants, Aquifer Water Quality Standards will not be violated and that the facility processes the financial and technical capability to comply with the permit conditions.

The Environmental Quality Act requires that all domestic wastewater and disposal facilities requiring an APP use BADCT as part of their wastewater treatment process. The ADEQ adopted BADCT requirements for new sewage treatment facilities. The design review of sewage treatment facilities has been consolidated into the APP application review process. The BADCT requirements are defined within the rules for secondary treatment, pathogen removal for new facilities and major modifications to older facilities. The APP rule took effect January 2001.



The reclaimed water use permit program, established in 1985, allows the reuse of reclaimed water for a variety of applications such as agriculture, urban lakes, golf course irrigation, ponds and industrial uses. Water reclamation plants are required by rules to have a reuse permit for the release of reclaimed water for reuse purposes.

There are two main categories of reclaimed water reuse including direct non-potable reuse and indirect reuse. Direct reuse consists of irrigation and makeup water for urban lakes. Indirect reuse typically involves aquifer recharge and recovery. The indirect reuse of reclaimed water usually involves recharge to an aquifer for storage and future recovery. The reclaimed water is typically allowed to infiltrate through the dry soils above the aquifer allowing additional treatment. Recharge projects using reclaimed water are required to obtain an APP.

### **Pecan Water Reclamation Plant**

AUSS has requested the Commission modify its conditions for approval to be consistent with the regional wastewater plan approved in the CAAG 208 Plan. AUSS intended to serve its CC&N with wastewater treatment plants at the Cambria and at Castlegate. AUSS no longer has any need for the construction, or approval of Cambria or Castlewood wastewater treatment plants to participate in Pecan WRP, a larger, CAAG 208 approved regional water reclamation plant.

The CAAG 208 Plan has found that the service area will be better served by a larger regional water reclamation plant, Pecan WRP. AUSS intended that wastewater flows from its service areas would be treated by existing smaller plants, Cambria and Castlegate. AUSS informed the ADEQ on June 12, 2003, that the Company and Johnson have entered into an agreement to treat wastewater flows intended for the Castlegate at the regional Pecan WRP.

AUSS and Johnson jointly constructed the Pecan WRP. Johnson and AUSS have entered into service agreements by which the companies respective service areas will be served by a regional treatment plant, rather than the previously authorized small plants. Johnson and AUSS have worked cooperatively to obtain regulatory approvals, construct the regional plant, and reconfigure collection facilities to ensure proper service to the community. AUSS and Johnson have also entered into an agreement in which AUSS will construct collection facilities to direct wastewater flows to be treated at the Pecan WRP.

CAAG recognized the long term treatment capabilities of the Pecan WRP will provide a greater benefit to the service area, than would the previously approved smaller waste water treatment plants, including Castlegate and Cambria.

According to the AUSS 208 Plan Amendment of September 2003, the Pecan WRP will be located in Section 29 and initially service approximately 1,280 acres in the planned area development. When the plant is fully developed Pecan WRP will provide service for approximately 10,000 acres of mixed use development extending from Ellsworth Road to Sierra Vista Drive, and Germann Road to Roberts Road.

As described above, the CAAG 208 approval process, in conjunction with state certification, requires that the owners and operators of Pecan WRP obtain the necessary APP, Reuse Permits, BADCT conformance, and AZPDES permit. Staff recommends that the Commission require Johnson to file a copy of the ADEQ APP for the Pecan WRP within 365 days of any decision in this matter.

### **AUSS Proposed Transfer to Johnson**

AUSS is seeking Commission authority to transfer Section 22 of its authorized CC&N, generally located one mile north of Combs road, bounded on the east by Schneff Road, and south of Rittenhouse Auxillary Airfield to Johnson. On January 23, 2002, CAAG refused to approve AUSS's Plan 208 Amendment to serve Section 22. The CAAG 208 Plan has authorized Johnson to serve Section 22.

According to the AUSS Amended Application to the Commission, the Company has not begun serving any customers in the proposed transfer area. Therefore, no security deposits have been collected by AUSS in Section 22. In addition, AUSS has not entered into any Main Extension Agreements nor are there any service line refunds due to any customer in Section 22.

On December 29, 2003, AUSS filed a copy of its September 2003 Plan Amendment for the Central Arizona Association of Governments 208 Water Quality approval process. According to AUSS amendment, Section 22 has two Planned Area Developments ("PAD"), Castlegate and Summer Ridge.

Castlegate is located in the northern half of the section and is to consist of approximately 276 acres. The subdivision is to consist of 1,409 medium to high density residential dwelling units, some commercial sites, and a 12-acre elementary school site. The elementary school site is to be developed in 10 phases.

Summer Ridge is a proposed subdivision of approximately 100 acres that is to developed in 350 single family homes.

Section 22 also includes a gravel mine of approximately 237 acres. The mine is regulated by ADEQ and Pinal County for runoff associated with the chemicals used.

### **Summary**

As discussed above, ADEQ has issued AUSS NOV's for its operation of wastewater treatment plants in violation of applicable codes. AUSS has failed to transfer ownership and has failed to monitor and report the performance of its treatment plants as required by the terms of the APP.

Staff believes that AUSS has failed to meet its obligations as a public service company authorized in Commission Decision No. 64288. AUSS has failed to transfer assets, operate assets, report and comply with ADEQ and the Commission.

Staff recommends the Commission require AUSS to show cause (i.e. produce evidence) that it is a fit and proper entity and that it is in the public interest to retain the CC&N issued in Decision No. 64288.

### **Recommendations**

Staff recommends that the Commission modify Decision No. 64288 to remove the condition that AUSS file, within 365 days of the effective date of the decision a copy of the ADEQ Certificate of Approval to Construct the Cambria Plant and the Castlegate Plant.

Staff recommends that the Commission approve AUSS Application to Transfer Section 22 of Township 2 South and Range 8 East to Johnson Utilities Company.


Staff recommends that the Commission cancel AUSS's CC&N for Section 22 of Township 2 South and Range 8 East.

Staff further recommends that the Commission require AUSS to Show Cause that the Commission should not revoke the CC&N provided in Decision No. 64288.

# MEMORANDUM

TO: Jim Fisher  
Executive Consultant II  
Utilities Division

FROM: Barb Wells   
Information Technology Specialist  
Utilities Division

THRU: Del Smith   
Engineering Supervisor  
Utilities Division

DATE: September 18, 2003

RE: **ARIZONA UTILITY SUPPLY & SERVICES, LLC (DOCKET NO. SW-04002A-02-0837)**  
**JOHNSON UTILITIES (DOCKET NO. WS-02987A-02-0837)**

Arizona Utility has filed an application to transfer part of its CC&N to Johnson Utilities. Attached is an amended legal description for the area that is to be transferred. This amended description has been docketed by the company and should be used in place of the original description submitted with the application.

Also attached is a copy of the map for your files.

:bsw

Attachments

cc: Docket Control  
Mr. Maurice Lee  
Deb Person (Hand-Carried)  
File

# COUINITY: Pinal

WS-2987 (6)  
Johnson Utilities Company

Sewer

SW-4002 (1)  
Arizona Utility Supply & Services, LLC

Sewer

Arizona Utility Supply & Services  
Docket No. SW-4002-02-837  
Application to Transfer to Johnson Utilities  
Docket No. WS-2987-02-837



## TOWNSHIP 2 South

### RANGE 8 East

1	2	3	4	5	6
12	11	10	9	8	7
13	14	15	16	17	18
24	23	22	21	20	19
25	26	27	28	29	30
36	35	34	33	32	31

List names and addresses of any other public utility interest Transferee has:

1. To be furnished by Transferee by 12/1/02

2.

1. Indicate the date that notice of the application was sent, or will be sent to the customers.

December 1, 2003

Note:

This application is necessary as Arizona Utility Supply & Services, LLC has been unable to acquire the 208 Amendment by Central Arizona Association of Governments (CAAG)

AREA TO BE TRANSFERED

LEGAL DESCRIPTION

ALL OF SECTION 22 TOWNSHIP 2 SOUTH, RANGE  
8 EAST OF THE GILA AND SALT RIVER BASE and  
MERIDIAN, PINAL COUNTY, ARIZONA.

## ASSET PURCHASE AND SALE AGREEMENT AND MUTUAL SETTLEMENT AND RELEASE OF CLAIMS

This ASSET PURCHASE AND SALE AGREEMENT AND MUTUAL SETTLEMENT AND RELEASE OF CLAIMS (this "Agreement") is made and entered into this \_\_\_\_\_ day of October, 2004, by and between RONALD ANCELL AS TRUSTEE OF THE CHAPTER 7 BANKRUPTCY ESTATE OF ARIZONA UTILITY SUPPLY & SERVICES, LLC (the "Trustee"), and the following parties:

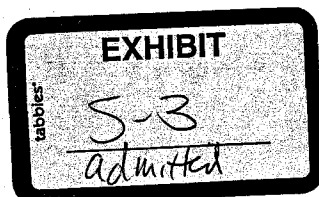
Centex Homes, Inc. ("Centex");  
Johnson Utilities Company, , L.L.C. dba Johnson Utilities Company ("JUC");  
Providence Development, Inc. ("Providence");  
KB HOME Phoenix Inc. ("KB HOME");  
KB HOME Sales-Phoenix Inc. ("KB Sales");  
K. Hovnanian Great Western Homes, LLC ("GW");  
Vantage Homes, Inc. ("Vantage");  
Woodside Homes of Arizona, Inc. ("Woodside");  
Richmond American Homes of Arizona, Inc. ("Richmond").

Centex, Providence, KB HOME, KB Sales, GW, Vantage, Woodside, and Richmond are hereinafter collectively referred to as the "Developer Parties", and referred to individually as identified above. The Developer Parties and JUC are hereinafter collectively referred to as the "Buyers", and individually referred to as previously identified or grouped.

### RECITALS

A. Trustee is the duly appointed trustee of the Chapter 7 bankruptcy estate of ARIZONA UTILITY SUPPLY & SERVICES, LLC, Chapter 7 Case No. 04-03873-JMM (the AUSS Chapter 7 Case") that was filed on August 4, 2004 and is now pending before the United States Bankruptcy Court for the District of Arizona (the "Bankruptcy Court").

B. AUSS holds a Certificate of Convenience and Necessity (CC&N) issued by the Arizona Corporation Commission and authorizing the provision of wastewater utility services in certain portions of Pinal County (the "AUSS CC&N"). JUC holds a CC&N issued by the Arizona Corporation Commission and authorizing the provision of wastewater utility services in certain portions of Pinal County. Before AUSS filed its chapter 7 petition, AUSS and JUC filed a joint application with the Arizona Corporation Commission (the "ACC") for the approval of an immediate deletion of the AUSS CC&N, the extension of JUC's CC&N to include the AUSS CC&N territory and transfer of certain utility assets of AUSS to JUC pursuant to an existing proceeding before the Arizona Corporation Commission under Docket Nos. SW-04002A-02-0837, WS-02987A-02-0837, WS-02987A-04-0465 and SW-02987A-04-0465 (the "ACC Proceedings"). The Parties to this Agreement desire to allow the ACC proceedings to go forward and permit the Arizona Corporation Commission to order the deletion of the AUSS CC&N, the extension of JUC's CC&N to include AUSS' CC&N territory, and the conveyance of certain of AUSS's utility assets to JUC to allow JUC to become the permanent service provider. Throughout this Agreement, the Parties understand and agree that the extension of





JUC's CC&N in the ACC Proceedings shall not include Sections 19 and 30, Twn 2 south R8 east, and those portions of the AUSS CC&N shall remain part of the bankruptcy estate of AUSS. In this Agreement, "AUSS CC&N Territory" shall mean the existing AUSS CC&N excluding Sections 19 and 30, Twn 2 south R8 east.

C. The bankruptcy estate of AUSS involves certain tangible and intangible personal property, including without limitation: (i) two wastewater treatment plants (the "WTP's") known as the Meadow Vista WTP and the Links WTP; (ii) the AUSS CC&N; (iii) any and all facilities and systems used by and necessary for AUSS to provide permanent wastewater utility service within the AUSS CC&N Territory (the "Utility Assets"); and (iv) certain lease agreements involving non-residential real property. The Utility Assets are more specifically identified in Exhibit A attached hereto.

D. Subject to Bankruptcy Court approval after a call for higher and better offers and advertising of the sale, the Buyers desire to purchase from Trustee, and Trustee desires to sell to the Buyers, the Utility Assets and the bankruptcy estate's interest in, and rights under, the AUSS CC&N for the purchase price and upon the terms and conditions set forth in this Agreement (the "Sale"). The Parties also desire, upon Bankruptcy Court approval, an immediate deletion of the AUSS CC&N, an immediate extension of JUC's CC&N to include the AUSS CC&N Territory and transfer of the Utility Assets to JUC pursuant to an existing proceeding before the Corporation Commission under Docket Nos. SW-04002A-02-0837, WS-02987A-02-0837, WS-02987A-04-0465 and SW-02987A-04-0465, and global settlement of various claims by and against the estate.

E. The Buyers and Trustee desire to set forth in this Agreement the terms and conditions under which the Buyers will purchase, and Trustee will sell, the Utility Assets, and under which the parties will settle various claims. Debtor has alleged a claim against JUC for damages. JUC and the Developer Parties also assert claims against AUSS and its bankruptcy estate. All of those claims are to be released, waived and compromised as part of this Agreement.

## A G R E E M E N T

In consideration of the mutual covenants and agreements contained in this Agreement, the parties agree as follows:

1. Sale of Utility Assets. On the terms and subject to the conditions set forth in this Agreement, Trustee will sell, assign, transfer and convey to one or more of the Buyers, to be specified in a bill of sale and assignment, and any other good and sufficient instruments of conveyance satisfactory to and reasonably requested by the Buyers, and the Buyers will purchase from Trustee, the Utility Assets and the estate's interest in the AUSS CC&N, free and clear of all liens, claims, pledges, licenses, sublicenses, assignments, charges, security interests, and other restrictions or encumbrances of any kind ("Encumbrances"), except as specifically provided in this Agreement. Trustee is selling the foregoing pursuant to this Agreement "As Is/Where Is" with no representations or warranties except for the representations and warranties expressly provided in this Agreement. The Trustee is not aware of any liens, claims, or Encumbrances against the Utility Assets. If any valid liens or Encumbrances against the Utility Assets are

discovered subsequent to the date of this Agreement, and it is determined by the Bankruptcy Court that such liens or Encumbrances were not released or transferred to the sales proceeds as a result of the approval of this Agreement, then the Buyers shall have the option to take the Utility Assets subject to such liens or encumbrances, or to declare this Agreement and the transfers provided for herein null and void, in which case any money paid to the Trustee for the Utility Assets shall be refunded to the Buyers.

2. ACC Proceedings. As part of this Agreement, the Trustee stipulates and agrees, that upon Bankruptcy Court approval, the ACC may move forward with an immediate deletion of the AUSS CC&N, extension of JUC's CC&N to include the AUSS CC&N Territory and conveyance of the Utility Assets to JUC pursuant to an existing proceeding before the ACC under Docket Nos. SW-04002A-02-0837, WS-02987A-02-0837, WS-02987A-04-0465 and SW-02987A-04-0465. The Trustee hereby stipulates and agrees that upon Bankruptcy Court approval, the ACC proceedings may go forward and result in a deletion of the AUSS CC&N and extension of the JUC CC&N to include the AUSS CC&N Territory as determined by JUC and the Corporation Commission, and conveyance of the Utility Assets to JUC. The Trustee shall do any and all things necessary to cooperate with Buyers in seeking Bankruptcy Court approval for conveyance of the Utility Assets and the AUSS Chapter 7 Bankruptcy Estate's interest in the AUSS CC&N to JUC. Trustee shall grant all approvals, take all such actions reasonably necessary, and execute such documents presented to him for signing as are reasonably necessary to facilitate and accomplish the deletion of the AUSS CC&N, extension of the JUC CC&N and conveyance of the Utility Assets to JUC in compliance and pursuant to applicable non-bankruptcy laws, rules, regulations, and administrative proceedings provided such documents do not create any liability or cost to the AUSS Chapter 7 Bankruptcy Estate.

3. Closing Date. Consummation of the conveyance of the Utility Assets (the "Closing") will take place at the offices of Gallagher & Kennedy, P.A., located at 2575 East Camelback Road in Phoenix, Arizona, as soon as reasonably possible after approval of this Agreement by the Bankruptcy Court in the AUSS Chapter 7 Case, fulfillment of the conditions precedent to extension of JUC's CC&N and conveyance of the Utility Assets, including those conditions identified in section 14 herein below, and issuance of the decision in the ACC Proceedings extending JUC's CC&N and approving the conveyance of the Utility Assets. The Parties to this Agreement specifically covenant and agree to expedite Bankruptcy Court approval, and final resolution of the ACC Proceedings as quickly as possible, including taking any and all actions reasonably necessary for such approvals. The Parties agree to seek and obtain expedited Bankruptcy Court approval of this Agreement on the most expedited basis acceptable to, and approved by, the Bankruptcy Court, but in no event later than November 15, 2004. After and until the Bankruptcy Court has issued an order or ruling approving this Agreement, the Trustee expressly stipulates and agrees to allow JUC and the Developers to use any and all Utility Assets as necessary to provide wastewater service to the AUSS CC&N Territory. Upon Bankruptcy Court approval of this Agreement, at the option of Buyers, the Trustee shall convey the Utility Assets to the entities designated by Buyers for purposes of holding those assets or Trustee shall continue to hold the Utility Assets until issuance of the decision in the ACC Proceedings extending JUC's CC&N and approving the conveyance of the Utility Assets to JUC. If Buyers exercise the option to have the Trustee convey the Utility Assets to the entities designated by Buyers for purposes of holding those assets, upon issuance of the final decision in the ACC Proceedings, those designated entities shall convey the Utility Assets

to JUC and JUC shall accept such conveyance for provision of permanent sewer service in accordance with that final ACC decision. If Buyers exercise the option to have the Trustee continue to hold the Utility Assets, upon issuance of the final decision in the ACC Proceedings, the Trustee shall convey the Utility Assets to JUC and JUC shall accept such conveyance for provision of permanent sewer service in accordance with that final ACC decision.

4. Liabilities. The Buyers will not assume, nor be responsible for, any liability, obligation or commitment of Trustee or AUSS whatsoever, whether actual, absolute, accrued, contingent or otherwise, arising out of or in connection with any set of facts, acts or circumstances directly or indirectly relating to the Utility Assets occurring prior to the Closing Date or existing at the Closing Date. Specifically, Buyers shall not be responsible for any liability, obligation or commitment of AUSS relating to the ownership and operation of the Meadow Vista and Links WTPs, including but not limited to any environmental obligations or liabilities arising under any applicable law. Trustee shall not be responsible for any liability, obligation, or commitment incurred by Buyers after the date of this Agreement related to the closing and decommissioning of the WTP's and the salvage sale.

5. De-Commissioning, Demolition, and Salvage of WTP's.

a. As a material term and condition of this Agreement, certain of the Developer Parties will, at their expense, close and decommission both of the WTPs in compliance with applicable non-bankruptcy laws, rules, and regulations (the "WTP Closings"). The Developer Parties responsible for the WTP Closings shall be designated by Buyers within 15 days after execution of this Agreement. The designated Developer Parties will obtain no fewer than two competitive bids for the WTP Closings from individuals or business entities commonly engaged in such commercial operations, and the Developer Parties shall submit such bids to the Trustee for review. The WTP Closings shall occur on an urgent, time is of the essence basis as determined by the Developer Parties. The designated Developer Parties shall submit a closure plan for the respective WTPs to the Arizona Department of Environmental Quality for approval within 14 days after Bankruptcy Court approval of this Agreement. The Trustee shall be advised as costs are incurred in the WTP Closings.

Once the WTP's are closed, the Developer Parties shall sell, in a commercially reasonable manner, the salvageable components and equipment of the WTPs. The Developer Parties shall notify the Trustee of the terms of any salvage sale. From the salvage sales price paid to the Developer Parties, the Developer Parties shall first recoup and be reimbursed their actual costs incurred in the Closing and Decommissioning of the WTPs. The net excess salvage sale proceeds shall be paid to the Trustee to be held free and clear of any lien, claim, or encumbrance asserted by any or all of the Buyers.

b. The Trustee shall cooperate with the designated Developer Parties and all State and/or Federal governmental offices, agencies, departments, or other authority regarding the WTP Closings, including but not limited to designating those Developer Parties responsible for closing the WTPs. The Developer Parties shall consult with the Arizona Department of Environmental Quality concerning closing of the WTP's. Trustee agrees to take any and all reasonable acts, and execute any and all documents reasonably necessary to facilitate and accomplish the foregoing and the WTP Closings.

c. By virtue of the obligations set forth in this Agreement, the Developer Parties and the designated entities as noted above are not assuming any responsibility or liability for operation, ownership and/or use of the Meadow Vista and Links WTPs. The designated Developer Parties have agreed to undertake the cost of the WTP Closings, and the salvage sale thereof, solely as a settlement and compromise of certain disputed claims relating to AUSS and the transfer of the Utility Assets.

6. Waiver And Release of Claims. Effective upon Bankruptcy Court approval of this Agreement, the AUSS Chapter 7 Bankruptcy Estate releases any and all claims AUSS, and/or the AUSS Chapter 7 Bankruptcy Estate, may have against each and every one of the Buyers. The Buyers hereby agree not to assert any claim whatsoever against the AUSS Chapter 7 Bankruptcy Estate and estate property, including but not limited to the Utility Assets, whether pre-petition or administrative, except as expressly set forth herein in connection with the WTP Closings, provided, however, the Bankruptcy Trustee consents to allow JUC to retain and apply the security deposit provided to JUC by AUSS under the June 11, 2004 Bulk Wastewater Treatment and Effluent Disposal Agreement between AUSS and JUC. In addition, on October 1, 2004, at ECF Docket Number 48, the Trustee filed a motion to extend the time to assume or reject unexpired leases and executory contracts (the "Extension Agreement"), including but not limited to the June 11, 2004 Bulk Wastewater Treatment and Effluent Disposal Agreement between AUSS and JUC (the "June 11<sup>th</sup> Contract"). A hearing on the Extension Motion is set for November 1, 2004. The Trustee agrees that, at the November 1<sup>st</sup> hearing on the Extension Motion, he will request that the Court deem the June 11<sup>th</sup> Agreement terminated and rejected immediately. Buyers reserve their rights to seek reimbursement and payment from the Interim Manager for any and all services provided post-petition.

7. Purchase Price. The price to be paid for the Utility Assets and the AUSS Chapter 7 Bankruptcy Estate's interest in the AUSS CC&N, and as consideration for the settlement, waiver and release of claims, is as follows: Upon Bankruptcy Court approval, the Buyers will pay to Trustee cash in an amount equal to Fifty Thousand and No/100ths Dollars (\$50,000.00) within 10 days. The foregoing sum shall be contributed by the Developer Parties in the respective shares set forth on Exhibit B hereto.

8. Trustee's Closing Deliveries. In exchange for payment of the Purchase Price, Trustee will sign and/or deliver to the Buyers, to the extent available:

- a. A bill of sale and assignment regarding the Utility Assets.
- b. Assignments or other documents presented to Trustee for signature regarding the WTP Closings, conveyance of the Utility Assets and transfer of the AUSS Chapter 7 Bankruptcy Estate's interest in the AUSS CC&N, as provided above.

9. Trustee's Representations and Warranties. Trustee represents and warrants to Buyers that Trustee has no actual knowledge that would negate any of the following statements:

- a. Subject to the approval of the Bankruptcy Court, Trustee has all requisite power and authority to enter into and perform the terms of this Agreement.

b. This Agreement and all supporting documentation constitute valid and legally binding obligations of Trustee, enforceable in accordance with their terms.

10. Buyers' Representations, and Warranties. Buyers represent and warrant to Trustee that Buyers have no actual knowledge which would negate any of the following statements:

a. Buyers have all requisite power and authority to enter into and perform the terms of this Agreement.

b. This Agreement and all supporting documentation constitute valid and legally binding obligations of Buyers, enforceable in accordance with their terms, except as enforcement may be limited by bankruptcy, insolvency or similar laws affecting creditor's rights generally.

11. Survival of Warranties. Trustee and Buyers represent to each other that all of the representations, warranties, covenants, and terms contained in this Agreement made by one to the other, and in any documents, certificates, or other instruments delivered by or on behalf of Trustee and Buyers pursuant to this Agreement or in connection with the transactions contemplated by this Agreement, are true now, will be true as of the Closing Date, and will survive the Closing.

12. Covenants of Trustee. Trustee covenants to Buyers as follows:

a. Between the date of this Agreement and the Closing Date, except as contemplated by this Agreement or with the prior written consent of Buyers, Trustee will not:

(i) Enter into, renegotiate or modify any contract or commitment affecting the Utility Assets.

(ii) Create or assume any encumbrance with respect to the Utility Assets.

(iii) Sell, assign, lease, transfer or otherwise dispose of any of the Utility Assets.

(iv) Take any other action inconsistent with his obligations under this Agreement or which could hinder or delay the consummation of the transactions contemplated by this Agreement.

b. Between the date of this Agreement and the Closing Date, Trustee will:

(i) Use his best efforts to cooperate with the Developer Parties to obtain the Bankruptcy Court's timely approval of the Sale and the transactions contemplated in this Agreement.

(ii) Promptly notify Buyers in writing if Trustee becomes aware of any fact or condition that causes or constitutes a breach of any of Trustee's representations and warranties contained in this Agreement, or if Trustee becomes aware of the occurrence of any

fact or condition occurring after the date of this Agreement that would have constituted a breach if any such representation or warranty had been made as of the time of occurrence or discovery of that fact or condition.

13. Buyer's Covenants. Buyers covenant to Trustee that Buyers will use their best efforts to obtain the Bankruptcy Court's timely approval of the Sale and the transactions contemplated in this Agreement.

14. Closing Contingencies. Buyers' obligation to consummate the Sale and perform their obligations under this Agreement are expressly conditioned and contingent upon the complete satisfaction or waiver of the following conditions precedent on and as of the Closing Date:

- a. The representations and warranties of Trustee are true and correct in all material respects.
- b. Trustee will have performed or complied with, in all material respects, all conditions, covenants and obligations required to be met or performed by Trustee under this Agreement.
- c. Buyers will have determined, in their sole and absolute discretion, that there has been no material, adverse change in the ownership, commercial practicability, functionality or marketability of the Utility Assets, and decommissioning of the WTPs, and that there are no latent or unknown conditions with regard to the WTPs.
- d. The Bankruptcy Court will have entered a final, non-appealable order approving the consummation of the transactions contemplated in this Agreement, for which no stay pending appeal has been entered, and which explicitly finds and orders that Buyer is entitled to the protections afforded by Section 363(m) of the Bankruptcy Code.
- e. The Arizona Department of Environmental Quality and the ACC shall have issued all requisite approvals, authorizations, permits, and other determinations, rulings, or decisions necessary to effect the transfers contemplated herein and/or necessary to facilitate permanent wastewater service in the AUSS CC&N Territory, and allow the Developer Parties to proceed with their normal business operations and home sales and closings, and facilitate deletion of the AUSS CC&N, extend the JUC CC&N to include the AUSS CC&N Territory and conveyance of the Utility Assets to JUC.

15. Risk of Loss. Risk of loss to the Utility Assets prior to the Closing Date will remain on Trustee, and destruction or threatened destruction of the Utility Assets, in whole or in part, before possession is delivered to Buyers, upon Buyers' written demand to Trustee, will terminate any and all of Buyers' obligations under this Agreement and any sums paid by Buyers to Trustee will be promptly refunded. Likewise, Buyers' obligations under this Agreement are contingent on the subsequent condition that the ACC will enter a final order approving the deletion of the AUSS CC&N, extending JUC's CC&N to include the AUSS CC&N Territory and approving conveyance of the Utility Assets to JUC. If that contingency does not occur as a condition subsequent, the Trustee shall promptly refund to Buyers any sums paid under this Agreement.

16. Termination. This Agreement shall terminate without any further action of the Parties if the Bankruptcy Court does not approve the Agreement or any of its material terms, including the release and waiver provisions included herein, or if any of the Utility Assets are acquired by any person or party other than the Buyers as contemplated herein, and upon such termination, the Parties shall have no further obligation under this Agreement.

17. Modification or Waiver. No modification of this Agreement will be deemed effective unless in writing and signed by the parties, and any waiver granted will not be deemed effective unless in writing, signed by the party against whom enforcement of the waiver is sought.

18. Third Party Beneficiaries. Nothing in this Agreement, express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any persons other than the parties to it, nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third person to any party to this Agreement.

19. Attorneys' Fees. If any proceeding or action is brought to recover any amount, or seek injunctive relief, under this Agreement, or for or on account of any breach of, or to enforce or interpret any of the terms, covenants, or conditions of this Agreement, the prevailing party will be entitled to recover from the other party, as part of the prevailing party's costs, reasonable attorneys' fees, the amount of which will be fixed by the Bankruptcy Court, as applicable, and will be made a part of any award or judgment rendered.

20. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall, for all purposes, be deemed an original and all of such counterparts, taken together, shall constitute one and the same Agreement.

21. Further Acts. Each party agrees to perform any further acts and to execute and deliver such documents that may be reasonably necessary to effectuate the terms of this Agreement. Upon reasonable request by Buyers and subject to reasonable confidentiality provisions, Trustee shall give to Buyers and Buyers' representatives full access during normal business hours to all of the properties, books, and records relating to the Utility Assets, and such access and cooperation as may be necessary to facilitate and accomplish the transactions provided for herein.

22. Effect of Agreement. This Agreement and the exhibits to this Agreement embody the entire Agreement and understanding of the parties and supersede any and all prior agreements, arrangements and understandings relating to matters provided for in this Agreement.

23. Captions. The captions are for convenience only and will not control or affect the meaning or construction of the provisions of this Agreement.

24. Notices. Any notice, demand or request required or permitted to be given under the provisions of this Agreement will be in writing and will be deemed to have been duly delivered on the date of personal delivery or on the date of mailing if mailed by registered or certified mail, postage prepaid and return receipt requested to the addresses set forth beneath the signature of each party, or to such other address as any party may request by notifying in writing all of the other parties to this Agreement.

25. Representation by Counsel. Each of the parties has been represented by or has had the opportunity to be represented by legal counsel of its own choice. The parties acknowledge that the law firm of Gallagher & Kennedy, P.A., has acted as attorneys for Centex and not as attorneys for any other party to this Agreement. This Agreement has been negotiated among the parties and if there is any ambiguity, no presumption construing the Agreement against a party will be imposed because this Agreement was prepared by counsel for the party or counsel for another party.

26. Severability. If any one or more of the provisions of this Agreement are held or found to be invalid, illegal or unenforceable in any respect, the parties hereto shall have the option to agree that the remaining provisions shall continue to be valid, legal and enforceable and will not in any way be affected or impaired by such invalidity, illegality or unenforceability. If the parties hereto fail or refuse to agree on the continuing validity of provisions remaining after any provision of this Agreement is determined by a court of competent jurisdiction to be invalid, then this entire Agreement shall be void and of no further force and effect, and any money paid to Trustee hereunder, and any transfer of assets made hereunder, shall be reversed, reconveyed, and refunded immediately.

27. Binding upon Successors and Assigns. This Agreement will be binding upon the parties and their legal representatives, successors, and assigns.

28. Exhibits. All exhibits referenced in this Agreement are incorporated by such reference into this Agreement.

29. Governing Law and Jurisdiction. This Agreement and all amendments to this Agreement are to be governed by the laws of the State of Arizona. The parties agree that the United States Bankruptcy Court for the District of Arizona, in the AUSS Chapter 7 Case, will have jurisdiction to hear and resolve any disputes arising under this Agreement, which jurisdiction shall be concurrent with the jurisdiction of the ACC over the matters encompassed within the terms of this Agreement that fall within the statutory jurisdiction of the ACC.

[Signatures of the parties are on the next page.]



The parties have executed this Agreement effective as of the day and year first above written.

**TRUSTEE:**

RONALD ANCELL, AS THE TRUSTEE OF THE  
CHAPTER 7 BANKRUPTCY ESTATE OF  
ARIZONA UTILITY SUPPLY & SERVICES,  
LLC

By: \_\_\_\_\_  
Name: Ronald Ancell  
Title: Chapter 7 Bankruptcy Trustee

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**BUYER:**

CENTEX HOMES, a Nevada general partnership

By: Centex Real Estate Corporation  
Its: Managing General Partner

By: \_\_\_\_\_  
John Michell, Division President

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**BUYER:**

JOHNSON UTILITIES, L.L.C. DBA JOHNSON  
UTILITIES COMPANY

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**BUYER:**

PROVIDENCE DEVELOPMENT, INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**BUYER:**

KB HOME PHOENIX INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**BUYER:**

KB HOME SALES-PHOENIX INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**BUYER:**

K. HOVNANIAN GREAT WESTERN HOMES,  
LLC

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**BUYER:**

VANTAGE HOMES OF ARIZONA, INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**BUYER:**

WOODSIDE HOMES OF ARIZONA, INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**BUYER:**

RICHMOND AMERICAN HOMES OF  
ARIZONA, INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

# EXHIBIT A



# **EXHIBIT B**

**EXHIBIT B**

**Developer Parties' Respective Shares of Purchase Price**

<b><u>Developer Party</u></b>	<b><u>Respective Share</u></b>
Centex	\$0
Providence	\$20,666.67
KB HOME and KB Sales (collectively, "KB")	\$4,166.66
GW	\$7,916.67
Vantage	\$4,166.66
Woodside	\$8,916.67
Richmond	\$4,166.67
<hr/>	
Total	\$50,000.00





UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF ARIZONA

Minute Entry

Hearing Information:

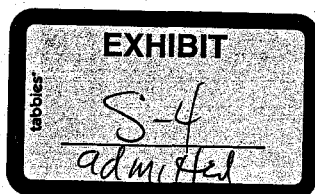
Debtor: ARIZONA UTILITY SUPPLY & SERVICES, LLC  
Case Number: 4:04-bk-03873-JMM Chapter: 7  
Date / Time / Room: MONDAY, NOVEMBER 29, 2004 10:00 AM SUITE 3-150  
Bankruptcy Judge: JAMES M. MARLAR  
Courtroom Clerk: CINDY TURNBULL  
Reporter / ECR: BEVERLY GRANILLO

Matter:

JOINT MOTION FOR EXPEDITED APPROVAL OF A SETTLEMENT AND COMPROMISE OF CLAIMS  
INCLUDING, AS A MATERIAL PART, A SALE OF ESTATE ASSETS, AND FOR RELATED RELIEF  
R / M #: 64 / 0

Appearances:

RONALD ANCELL, TRUSTEE/WITNESS  
MICHAEL W BALDWIN, ATTORNEY FOR ARIZONA UTILITY SUPPLY & SERVICES, LLC  
MAURICE LEE, PRINCIPAL OF THE DEBTOR IS PRESENT IN THE COURTROOM  
MICHAEL M. NEAL, ATTORNEY FOR RONALD ANCELL  
JOSEPH E. COTTERMAN AND TODD WILEY, ATTORNEYS FOR CENTEX HOMES, INC.  
DAVID DAMORE, ATTY PROVIDENCE DEVELOPMENT, APPEARING BY PHONE  
WALTER WOOD, ATTY R.S. INVESTMENTS  
EDWARD ZACHARY, KB HOMES, APPEARING BY PHONE  
CATHY REECE AND JAY SHAPIRO, ATTORNEYS FOR JOHNSON UTILITY COMPANY  
CHRISTINE LANDAVAZO, ATTORNEY KB HOMES, APPEARING BY PHONE  
JASON GELLMAN, ATTY ARIZONA CORPORATION COMMISSION  
JIM FISCHER, ARIZONA CORPORATION COMMISSION STAFF, PRESENT





**UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF ARIZONA**

**Minute Entry**

(continue)... 4:04-bk-03873-JMM

MONDAY, NOVEMBER 29, 2004 10:00 AM

**Proceedings:**

MR. COTTERMAN STATES HE DOES NOT THINK THERE ARE ANY BIDDERS PRESENT TODAY. HE FEELS THE RSI OBJECTION CAN BE RESOLVED BY ORAL ARGUMENT. HIS CLIENT, CENTEX, IS A CREDITOR, AND IS ALSO ONE OF THE BUYERS.

COURT: THE ONLY OBJECTION RECEIVED WAS FROM RS INVESTMENTS. ALL OF THE OTHER CREDITORS ARE IN SUPPORT OF THE COMPROMISE AND THE SALE.

MR. WOOD STATES THE ISSUES OF THE SALE AND SETTLEMENT WOULD REQUIRE THE TRUSTEE TO TESTIFY AS TO WHAT HE DID TO DETERMINE IF THE SETTLEMENTS WERE FAIR.

MR. NEAL CALLS MR. ANCELL TO THE STAND, AND HE IS SWORN AND EXAMINED.

MR. WOOD AND MR. COTTERMAN CROSS-EXAMINE MR. ANCELL.

MR. NEAL RE-DIRECTS THE WITNESS. CENTEX IS WAIVING A CLAIM, AND HAS FILED A CLAIM FOR APPROXIMATELY \$700,000. THE TRUSTEE HAS NOT INVESTIGATED WHETHER THIS CLAIM IS VALID OR NOT. RE-DIRECT CONTINUES.

THE COURT QUESTIONS THE TRUSTEE, AND THEN EXCUSES HIM.

MR. NEAL STATES THE DEBTOR SCHEDULED A \$4 MILLION CLAIM AGAINST JOHNSON UTILITIES.

THE COURT CALLS FOR HIGHER OR BETTER OFFERS, AND THERE ARE NONE.

MR. WOOD RENDERS HIS ORAL ARGUMENT. THERE WAS A POTENTIAL BUYER, BUT THE BUYER HAS SINCE WALKED AWAY. HE EXPLAINS WHY.

MR. COTTERMAN RENDERS A REBUTTAL. HE FEELS THERE MAY BE SOME NET PROCEEDS ON THE DECOMMISSIONING OF THE PLANTS. JOHNSON UTILITY IS TEMPORARILY PROVIDING WASTEWATER TREATMENT SERVICES UNTIL DECEMBER 8, 2004.

MR. NEAL RE-URGES THE MOTION FOR APPROVAL OF THE SETTLEMENT.

THE COURT ISSUES A RULING. THERE ARE NO OTHER BIDDERS FOR THE SALE, WHICH INCLUDES A WAIVER OF \$2 MILLION OF CLAIMS, PLUS \$50,000 OF THE ESTATE, IT APPEARS TO BE THE BEST OFFER FOR THE PROPERTY. THE SALE AND THE COMPROMISE ARE BOTH APPROVED. MR. NEAL IS TO PREPARE AND SUBMIT THE ORDER.

PROMISSORY NOTE

\$805,000

Pinal County, Arizona  
April 23, 2002

FOR VALUE RECEIVED, the undersigned, ARIZONA UTILITY SUPPLY & SERVICES, LLC, an Arizona limited liability company ("**Borrower**") hereby promises to pay to the order of MEADOW VISTA COMPANY, LLC, a Delaware limited liability company ("**Meadow Vista**"), at its office at 3411 Candelaria Road NE, Suite J, Albuquerque, New Mexico 87107, or at such other place as the holder of this note may from time to time designate, the sum of \$805,000 inclusive of interest, subject to the provisions of Section 3 below, such principal sum becoming due and payable according to the following schedule:

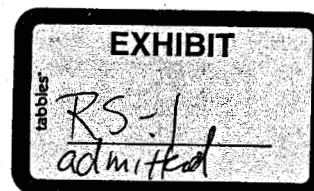
<u>Payment Date</u>	<u>Payment Amount</u>
On or before January 1, 2003	\$ 10,000
On or before January 1, 2004	\$ 30,000
On or before January 1, 2005	\$ 80,000
On or before January 1, 2006	\$105,000
On or before January 1, 2007	\$125,000
On or before January 1, 2008	\$455,000

COPY

All amounts payable under this note are payable in lawful money of the United States.

1. This note is executed by Borrower and delivered to Meadow Vista pursuant to Section 2 of that certain Purchase and Sale Agreement entered into as of April 23, 2002 between Borrower as Purchaser and Meadow Vista as Seller (the "**Purchase Agreement**"), as security for the performance of Borrower of all covenants under the Purchase Agreement and the payment of the consideration as scheduled from Borrower to Meadow Vista for the sale of the wastewater treatment plant within the mobile home park commonly known as Ocotillo Meadows, as set forth in the Purchase Agreement. Capitalized terms not otherwise defined herein have the respective meanings assigned to them in the Purchase Agreement.

2. This note is described in and secured by a certain security agreement (the "**Security Agreement**") of even date herewith executed and delivered by Borrower and its managers, the Sak Family Limited Partnership and Maurice L. Lee, to Meadow Vista, pledging forty-nine percent (49%) of the equity ownership in Borrower to Meadow Vista, to which Security Agreement reference is hereby made for a description of the security and a statement of the terms and conditions upon which this note is secured; subject to the condition that each time Borrower makes a scheduled



payment under Section 2 of the Purchase Agreement, the Security shall be recalculated and reduced to the amount determined by multiplying the initial Security percentage (*i.e.*, forty-nine percent (49%)) by a fraction, the numerator of which is the remaining unpaid Consideration and the denominator of which is the Consideration, as follows:

$$49\% \times [\text{Outstanding and Unpaid Consideration} / \$805,000]$$

Meadow Vista shall execute such documents as may reasonably be requested by Borrower to evidence each reduction in the Security under the Purchase Agreement and this Security Agreement as a result of Borrower making each scheduled payment. Each of Sak Family Limited Partnership and Maurice L. Lee will maintain their respective fifty percent (50%) interest in the Security during the term of this note.

3. If Borrower is delinquent in payment of any amount based on the payment schedule in this note, then such payment amount will, to the full extent permitted by law, bear interest at eight percent (8%) per annum until paid. Interest shall be computed on the basis of a 365-day year and actual days elapsed. If Borrower fails to make a scheduled payment within fifteen (15) days after the due date for such payment as set forth herein, then Meadow Vista may, upon written notice to Borrower, require immediate payment in full of the remaining unpaid Consideration.

4. Borrower is a party with Meadow Vista or Centex Homes to the following agreements:

1. Purchase and Sale Agreement;
2. Security Agreement;
3. Waste Water Treatment Plant Lease (Land);
4. Promissory Note;
5. Easement Agreement;
6. Ocotillo Meadows Extension Agreement; and
7. Centex Homes Extension Agreement.

Borrower hereby acknowledges and agrees that its default under any of those agreements will be deemed a default under all of those agreements and Meadow Vista will immediately have all rights of enforcement under each and every of those agreements upon the default by Borrower under any of said agreements. Meadow Vista hereby acknowledges and agrees that its invoking this cross default right will not relieve Borrower from providing wastewater treatment service under the Ocotillo Meadows Extension Agreement or the Centex Homes Extension Agreement to existing homeowners whose homes have been connected to Borrower's wastewater treatment system or can be connected without any further performance by Centex Homes or Meadow Vista under their respective agreements.

5. Borrower and all makers, endorsers, guarantors and sureties also promise to pay, in addition to the full amount due hereon, all expenses incurred by the holder hereof in collecting this

note, including, without limitation, the fees and expenses of any attorney to whom this note is referred for such collection (whether or not litigation is commenced) and for representation in any proceedings under any bankruptcy or insolvency law.

6. All makers, endorsers, guarantors and sureties hereof jointly and severally waive presentment, demand for payment, notice of protest, notice of dishonor, diligence in collection and matters of a like nature. All makers, endorsers, guarantors and sureties consent to (i) any renewal, extension or modification (whether one or more) of the terms of this note and/or the mortgage, including the terms or time of payment under this note, (ii) the release or surrender, exchange or substitution of all or any part of the payment hereof, (iii) the granting of any other indulgences to Borrower, and (iv) the taking or releasing of other or additional parties primarily or contingently liable hereunder. Any such renewal, extension, modification, release, surrender, exchange or substitution may be made without notice to Borrower and any endorsers, guarantors and sureties hereof and without affecting the liability of said parties hereunder.

7. Whenever Meadow Vista is referred to in this note, such reference shall be deemed to include the successors and assigns of Meadow Vista, including, without limitation, any subsequent assignee or holder of this note, and all covenants, provisions and agreements by or on behalf of Borrower and any endorsers, guarantors and sureties hereof which are contained herein shall inure to the benefit of the successors and assigns of Meadow Vista.

8. Notwithstanding any other provision of this note, interest, late charges, fees and the like shall in no event exceed the maximum rate permitted by applicable law. Should any payment in the nature of interest cause the maximum rate to be exceeded, the portion of the payment in excess of the maximum rate shall be applied to reduce the outstanding principal balance of the indebtedness.

9. This note shall be governed by and construed according to the laws of the State of Arizona.

IN WITNESS WHEREOF the Borrower has executed this note as of the date and year first above written.

ARIZONA UTILITY SUPPLY & SERVICES, LLC,  
an Arizona limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**COPY**

## SECURITY AGREEMENT

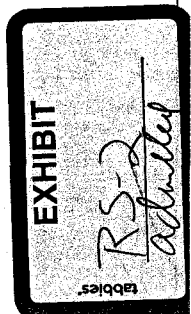
THIS SECURITY AGREEMENT (the "Security Agreement") is executed as of April 23, 2002 (the "Effective Date"), by ARIZONA UTILITY SUPPLY & SERVICES, LLC, an Arizona limited liability company ("Buyer"), SAK FAMILY LIMITED PARTNERSHIP, an Arizona limited partnership ("Sak") and MAURICE L. LEE, an individual ("Lee"), for the benefit of MEADOW VISTA COMPANY, LLC, a Delaware limited liability company ("Secured Party"). Buyer, Sak and Lee are hereinafter collectively called "Debtor."

1. Reference to Purchase and Sale Agreement. This Security Agreement is being executed and delivered to evidence the security for the Note (as hereinafter defined) issued in connection with the sale and purchase of the wastewater treatment plant (the "Treatment Plant") located east of Kenworthy Road on Ocotillo Road in Pinal County, Arizona dated as of April 23, 2002, between Buyer and Secured Party (the "Purchase Agreement") and for the performance by Debtor of its covenants in the Purchase Agreement. The terms, conditions and provisions of the Purchase Agreement and the Note are incorporated herein by reference, the same as if set forth herein verbatim, which terms, conditions, and provisions shall continue to be in full force and effect hereunder so long as the Note remains outstanding.
2. Indebtedness. This Security Agreement secures the payment of the indebtedness of Buyer evidenced by that certain Promissory Note dated as of the date hereof in the original amount of Eight Hundred Five Thousand Dollars (\$805,000), inclusive of interest (the "Note") and the performance of all present and future obligations of Buyer to Secured Party arising under or pursuant to this Security Agreement (the "Indebtedness").
3. Agreement and Collateral. For value received, Debtor hereby grants to Secured Party a security interest (the "Security Interest") in forty-nine percent (49%) of the equity ownership of Buyer (the "Collateral"); subject to the condition that each time Buyer makes a scheduled payment under the Note, the Collateral shall automatically be recalculated and reduced to the amount determined by multiplying the original Security Interest percentage (i.e., forty-nine percent (49%)) by a fraction, the numerator of which is the remaining unpaid portion of the Note and the denominator of which is the face amount of the Note, as follows:

$$49\% \times [\text{Outstanding balance of the Note} / \$805,000]$$

The Secured Party shall execute such documents as may reasonably be requested by Debtor to evidence each reduction in the Collateral as a result of Buyer making each scheduled payment under the Note. Each of Sak and Lee will maintain their respective fifty percent (50%) interest in the Collateral during the term of the Note.

4. Debtor's Warranties, Covenants and Further Agreements.
  - a. Regional Sewer Treatment Facility. Debtor is attempting to obtain necessary governmental approvals to construct a regional sewage treatment facility which, when completed and authorized for continuous operation, would supplant the Treatment Plant. If Debtor enters into an agreement to sell the Treatment Plant prior to the payment in full of the Note and the full performance by Buyer of the Purchase





Agreement, then Debtor will promptly provide Secured Party with notice of such agreement to sell and upon closing, Debtor will use the proceeds of the sale of the Treatment Plant to pay the remaining unpaid balance of the Note.

- b. Insurance. Until the Note is paid in full, Debtor will, at its own cost and expense, maintain and provide general liability insurance relating to the Treatment Plant for the benefit and protection of the Secured Party and Debtor, in an amount of not less than \$1 million per occurrence with an aggregate total limit of \$3 million. Such insurance coverage will also provide that Secured Party is named as an additional insured. Purchaser will also provide for worker's compensation under applicable Arizona law.
- c. Perfection. No financing statement or security agreement naming the Debtor as the debtor hereunder and covering the Collateral or any part thereof is presently on file in any public office and, at Secured Party's request, Debtor will execute all financing statements and other instruments and take all other actions reasonably requested as necessary by Secured Party to perfect the Security Interest.
- d. Organization and Qualification. Debtor is duly organized and is validly existing as a limited liability company in good standing under the laws of its state of organization, with the power to own or lease and operate its properties and assets and to conduct its business as presently conducted.
- e. Organizational Power and Authorization. Debtor represents and warrants to Secured Party that Sak and Lee own one hundred percent (100%) of the equity ownership in Buyer and Debtor has the power to make, deliver and perform this Security Agreement and the other agreements contemplated hereby, to incur its obligations hereunder and thereunder, and to grant the Security Interest. Debtor has taken all necessary action to authorize the execution, delivery and performance of this Security Agreement. No consent, approval or authorization of, or declaration or filing with, any governmental or other public body or any other person is required in connection with the execution, delivery and performance by the Debtor of this Security Agreement, or the consummation of the transactions contemplated hereby, except such consents, approvals or authorizations which have been obtained. This Security Agreement constitutes the legal, valid and binding obligation of Debtor enforceable in accordance with its terms.
- f. Litigation. There is no action, proceeding or investigation pending or, to Debtor's knowledge, threatened which questions or could affect the validity of the execution, delivery or performance of this Security Agreement.
- g. Compliance with Other Instruments. Debtor is not in violation of any term or provision of its limited liability company agreement, or of any agreement, instrument, judgment, decree, order, statute, rule or governmental regulation applicable to it and material to the present and currently planned conduct of its business.

- h. Accuracy of Information. All information furnished to the Secured Party concerning the Debtor, the Collateral and the obligations contained herein, or otherwise for the purpose of obtaining or maintaining credit, is accurate and complete in all material respects.

5. Limited Liability Company Agreement. From the Effective Date until the payment in full of the Note and the full performance by Buyer of the Purchase Agreement, Buyer (i) will remain duly organized, validly existing and in good standing under the laws of the State of Arizona and (ii) will not without the prior written consent of the Secured Party:

- a. Make any substantial change in the character of its business;
- b. Make any loan or advance to any person or entity;
- c. Sell, grant or award or enter into any agreement to issue, sell, grant or award any equity security or option to acquire any equity security;
- d. Directly or indirectly declare or pay dividends or make any distributions upon any of its equity securities in any calendar year which total more than fifty percent (50%) of net income for such calendar year as reported by Buyer in its annual report filed with the Arizona Corporation Commission;
- e. Directly or indirectly redeem, purchase or otherwise acquire, or permit any subsidiary to redeem, purchase or otherwise acquire any of Buyer's equity securities;
- f. Become subject to, or permit any of its subsidiaries to become subject to, any agreement or instrument, which by its terms would restrict Buyer's right to perform any of its obligations pursuant to the terms of the Purchase Agreement or this Security Agreement;
- g. Make any amendment to the Buyer's operating agreement, or file any resolution of the managers with the Arizona Secretary of State;
- h. Enter into, or permit any subsidiary to enter into, any transaction with any of its or any subsidiary's officers, directors, employees or affiliates;
- i. Establish or acquire any subsidiaries;
- j. Change its fiscal year;
- k. Sell, grant or award any equity security or any option to acquire any equity security to employees, consultants or advisors to Buyer;

- l. Create, assume or permit, or permit any subsidiary to create, assume or permit, any lien upon any of its properties or assets, whether now owned or hereafter acquired;
  - m. Pay or provide annual aggregate cash and noncash compensation to employees in excess of current salaries or otherwise fix the compensation of, or grant compensation to, any key employee of Buyer or any subsidiary; provided, however that Managers may draw annual salaries from Buyer which, when combined with any dividends or distributions to Managers for the same annual period, do not exceed fifty percent (50%) of net income for that annual period as reported by Buyer in its annual report filed with the Arizona Corporation Commission.
  - n. Own, purchase or acquire any stock, obligations or securities of, or any interest in, or make any capital contribution to, any other person, or own, purchase or acquire any property not used in the usual and ordinary course of business;
  - o. Make any capital expenditures exceeding \$50,000 in the aggregate on a consolidated basis during any twelve-month period;
  - p. Enter into any leases or other rental agreements; or
  - q. Create, incur, issue, assume, guarantee or otherwise become or remain directly or indirectly liable for, or permit any subsidiary to create, incur, issue, assume, guarantee or otherwise become or remain directly or indirectly liable for, any indebtedness for borrowed money in excess of \$100,000 while this Security Agreement shall remain in force.
6. Limitation on Liability. Notwithstanding anything to the contrary in this Security Agreement, Secured Party acknowledges that (i) neither Sak nor Lee assumes any personal liability for nonpayment of the Note, and (ii) Sak and Lee are signing this Security Agreement to evidence their personal liability for all other undertakings of the Debtor under this Security Agreement other than payment of the Note.
7. Events of Default. An event of default shall exist under this Security Agreement upon the happening of any of the following events or conditions:
- a. Any event of default as described in the Note;
  - b. Debtor's failure to perform its obligations hereunder;

then, and in any such event, Secured Party may declare, upon written notification to Debtor, that all the obligations hereunder not otherwise due are due and payable within fifteen (15) days of the date of such written notification.

8. Remedies of Secured Party upon Default. Upon the occurrence of an event of default, Secured Party shall have such rights and remedies as provided under Arizona law, except as set forth in Section 6 herein.
9. General.
- a. Waiver by Secured Party. No waiver by Secured Party of any right hereunder or of any event of default hereunder shall be binding upon Secured Party unless such waiver is in writing and executed by Secured Party. Failure or delay by Secured Party to exercise any right hereunder or waiver of any event of default hereunder shall not operate as a waiver of any other right, or further exercise of such right, or of any further event of default.
  - b. Parties Bound. This Security Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors, receivers, trustees and assigns, where permitted by this Security Agreement. If all Indebtedness shall at any time be paid in full, Secured Party agrees to provide Debtor with whatever certificates and documents as Debtor may reasonably request evidencing the termination of the Security Interest and this Security Agreement shall become null and void and be of no further force or effect without any further action of the parties hereto.
  - c. Applicable Law; Definitions. The substantive laws of the state of Arizona and applicable federal laws of the United States shall govern the validity, construction, enforcement and interpretation of this Security Agreement and of all other documents executed in connection with the Indebtedness, except to the extent the laws of any jurisdiction where Collateral is located requires application of such laws with respect to the Collateral.
  - d. Modification. This Security Agreement shall not be amended in any way, except by a written agreement signed by both parties to this Security Agreement.
  - e. Severability. The unenforceability of any provision of this Security Agreement shall not effect the enforceability or validity of any other provision hereof.
10. Cross Default. Buyer is a party with Secured Party or Centex Homes to the following agreements:
- a. Purchase and Sale Agreement;
  - b. Security Agreement;
  - c. Waste Water Treatment Plant Lease (Land);
  - d. Promissory Note;
  - e. Easement Agreement;
  - f. Ocotillo Meadows Extension Agreement; and
  - g. Centex Homes Extension Agreement.

Buyer hereby acknowledges and agrees that its default under any of those agreements will be deemed a default under all of those agreements and Secured Party will immediately have all rights of enforcement under each and every of those agreements upon the default by Buyer under any of said agreements. Secured Party hereby acknowledges and agrees that its invoking this cross default right will not prohibit Buyer from providing wastewater treatment service under the Ocotillo Meadows Extension Agreement or the Centex Homes Extension Agreement to existing homeowners whose homes have been connected to Buyer's wastewater treatment system or can be connected without any further performance by Centex Homes or Secured Party under their respective agreements.

EXECUTED as of the day and year first herein set forth.

**DEBTOR:**

**ARIZONA UTILITY SUPPLY & SERVICES, LLC,**  
an Arizona limited liability company

By: Maurice L. Lee  
Name: MAURICE L. LEE  
Title: MDR

**SAK FAMILY LIMITED PARTNERSHIP,**  
an Arizona limited partnership

BY: **SAK INVESTMENTS, L.L.C.,**  
an Arizona limited liability company

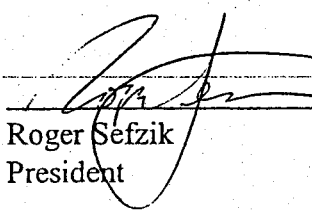
By: Stephen A. Kohner  
Stephen A. Kohner  
Manager

Maurice L. Lee  
Maurice L. Lee

**SECURED PARTY:**

**MEADOW VISTA COMPANY, LLC,**  
a Delaware limited liability company

By: \_\_\_\_\_

  
Roger Sefzik  
President